

In the Matter of:

CDK Global & Reynolds and Reynolds

*September 19, 2019
Robert Brockman
Vol. 2*

Condensed Transcript with Word Index



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3 ON BEHALF OF THE FEDERAL TRADE COMMISSION:	3 MR. ABRAHAMSEN: We will resume today our
4 DANA F. ABRAHAMSSEN, ESQUIRE	4 examination of Mr. Brockman. We have as counsel for
5 WILLIAM LANNING, ESQUIRE	5 the Federal Trade Commission, William Lanning. And
6 MICHAEL WILLIAMS, ECONOMIST	6 Mr. Ansaldo, who was with us yesterday, is not present
7 Federal Trade Commission	7 today. But otherwise the attendance in the room is the
8 600 Pennsylvania Avenue, N.W.	8 same as yesterday. And we are back on the record.
9 Washington, D.C. 20580	9 Whereupon --
10 (202) 326-3695	10 ROBERT BROCKMAN,
11 dabrahamsen@ftc.gov	11 a witness, called for examination, having been
12	12 previously duly sworn, was examined and testified as
13 ON BEHALF OF REYNOLDS & REYNOLDS:	13 follows:
14 MICHAEL P.A. COHEN, ESQUIRE	14 EXAMINATION
15 AMAR NAIK, ESQUIRE	15 BY MR. ABRAHAMSEN:
16 Sheppard, Mullin, Richter & Hampton, LLC	16 Q. Mr. Brockman, good morning.
17 2099 Pennsylvania Avenue, N.W.	17 A. Good morning.
18 Suite 100	18 Q. I remind you, you are still under oath.
19 Washington, D.C. 20006	19 A. I understand.
20 (202) 747-1958	20 Q. We were talking yesterday about the different
21 mcohen@sheppardmullin.com	21 approaches Reynolds had when it came to its idea about
22	22 security and how it differed from the way the
23 ALSO PRESENT:	23 laissez-faire attitude that CDK had when it came to
24 SCOTT CHERRY	24 security. And I wanted to ask whether it would have
25 JON EMMANUAL	25 been beneficial for Reynolds' business if CDK changed

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1 its philosophy. You mentioned yesterday that CDK was
 2 costing Reynolds millions of dollars by hacking in to
 3 your system, and they were using the fact that you had
 4 a closed system as a way to tell dealers that they
 5 should switch DMSes over to the CDK DMS. So if CDK
 6 changed its business practice and adopted a practice
 7 more like Reynolds' practice of not allowing third
 8 parties on its system, would that benefit Reynolds?

9 A. I hadn't really thought about that, but
 10 certainly they would not be able to declare us fools
 11 and idiots. And to that extent, I'm sure it would have
 12 been beneficial. They would not have kept throwing the
 13 way we were doing things up in our face in sales
 14 situations.

15 **Q. And it would have vindicated your position on**
 16 **the importance of security for data as well?**

17 A. Certainly it would. There's no question.

18 **Q. Let me ask you to take a look at a document**
 19 **we've labeled CX 1143 and ask you to take a look at it.**
 20 **CX 1143 has Bates CDK_CID_01535307. It's a two-page**
 21 **exhibit.**

22 A. Yes, I find the next-to-the-last paragraph
 23 somewhat amusing.

24 **Q. I'm sorry, you are talking about the**
 25 **next-to-the-last paragraph of the first page of the**

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1 discussed yesterday as far as which telephone call, if
 2 you could refresh my recollection in that.

3 **Q. I believe it's CX 4043.**

4 MR. COHEN: Here we go. I have 4043 in front
 5 of him as well.

6 THE WITNESS: This is my list of talking points
 7 for an eventual telephone conversation.

8 BY MR. ABRAHAMSEN:

9 **Q. When you said this, you are referring to**
 10 **CX 4043?**

11 A. That's right.

12 **Q. Had you had any other telephone calls with**
 13 **Mr. Anenen in this June 30th time period aside from the**
 14 **one call you reference in your e-mail?**

15 A. As best as I can recall, that was the only one.
 16 Mr. Anenen was a hard person to get ahold of.

17 **Q. The response from Mr. Anenen is the first page**
 18 **of CX 1143, and I would like you to take a look at the**
 19 **indented part of the paragraph on the first page of the**
 20 **exhibit and the first hash mark under the sentence that**
 21 **begins with, Based on my assumption, it starts, "For**
 22 **ADP", do you see that sentence?**

23 A. I'm sorry, I don't know if I'm looking at the
 24 right thing or the right side of it.

25 **Q. Yes, CX 1143.**

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1 **exhibit?**

2 A. Of the first page. It's the one that says, I
 3 should point out, we have not been accessing R&R
 4 systems for decades, as you said. Our business in
 5 access R&R systems came to us through an acquisition.

6 I didn't think that acquiring something
 7 automatically put them through the holy water.

8 **Q. I appreciate that. His point about the number**
 9 **of years that CDK had been accessing the Reynolds**
 10 **system is a response to your e-mail to him; is that**
 11 **correct?**

12 A. Yes, I believe that's correct.

13 **Q. So the record is clear, the Exhibit CX 1143 has**
 14 **as the second page of the exhibit the first e-mail in**
 15 **the e-mail and responsive e-mail. And the first e-mail**
 16 **is from Mr. Brockman to Mr. Anenen on June 30, 2014.**
 17 **And the first sentence of your e-mail to Mr. Anenen**
 18 **states, "I think there is some confusion surrounding**
 19 **the issue that I called you about last week."**

20 **Do you see that?**

21 A. Yes.

22 **Q. So is the call that you are referring to in the**
 23 **first sentence of the second page of this exhibit the**
 24 **telephone conversation that we discussed yesterday?**

25 A. I'm not sure that I recall exactly what was

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1 A. Dash 001?

2 **Q. Yes.**

3 A. Excuse me, I was on the wrong page. And your
 4 question?

5 **Q. I was going to direct your attention to the**
 6 **paragraph that's indented, and it's the first paragraph**
 7 **under, "Based on my assumption".**

8 A. This is the one that starts off, "For ADP to
 9 provide integration to Naked Lime"?

10 **Q. Correct. What did you interpret him to mean**
 11 **when he talked in that paragraph about providing**
 12 **integration to Naked Lime, having to go through a set**
 13 **of defined, documented and thoroughly tested processes?**

14 A. I interpreted that to mean what he was
 15 describing was a 3PA process.

16 **Q. And had you talked to him about having your**
 17 **applications go through 3PA prior to receiving this**
 18 **e-mail?**

19 A. I had not personally. I would suspect by the
 20 context that my people had been talking to his people.

21 **Q. But at this time, by the time you read this**
 22 **e-mail, CX 1143, you, at that point, were aware that**
 23 **CDK had a 3PA program?**

24 A. Yes, but my people had been talking about it to
 25 me.

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<p>1 Q. And he talks here about not only for Reynolds 2 and Reynolds, but he also makes reference in the first 3 sentence for ADP to provide integration to Naked Lime 4 or R&R or any third party. What did you interpret him 5 to be meaning when he said that for any third party 6 they would have go through 3PA?</p> <p>7 A. I don't know that I paid a lot of attention to 8 that particular line. What I was more interested in is 9 that they were, as of this date, clearly getting behind 10 the process of the stand down and they were describing 11 things that they needed to have, which I considered to 12 be reasonable as part of the soft landing.</p> <p>13 Q. So you thought it was reasonable for him to 14 expect you to go through 3PA for your apps?</p> <p>15 A. Yes.</p> <p>16 Q. And with respect to his reference, and he says 17 it twice in this paragraph, in the first line he talks 18 about how this has to apply to any third party. And 19 then the very last sentence of this paragraph says, 20 "Every third party must operate within these 21 parameters." Did you understand that sentence to mean 22 that CDK was no longer going to adhere to its 23 laissez-faire attitude about third parties?</p> <p>24 A. Clearly this e-mail represented -- it may not 25 have been a change, but my understanding of where they</p>	<p>1 Nation, of course, is their largest customer because 2 it's the biggest chain dealer operator in the whole 3 country.</p> <p>4 What we are seeing here is a well-developed 5 process, but I had not been aware of that before this. 6 And to see what all he wrote here, actually it's 7 comforting in that the worst situation would be if 8 there were no process at all and they would have to 9 build one from scratch. Looking at this one, you can 10 say, well, this has been running for a while and it's 11 well documented. It looks like it would be a 12 reasonable process to interface using what he's laying 13 out here.</p> <p>14 Q. And he's kind of making a point, if I'm 15 interpreting this correctly, that almost explaining why 16 maybe you haven't heard about it, that you have been 17 very public about your position when it comes to third 18 parties accessing your DMS, and he's kind of hinting 19 that you may not have known this because we haven't 20 made it public yet that we are going to take the same 21 position that you are going to take on third-party 22 access. Did you interpret this e-mail that way?</p> <p>23 A. I don't know that I thought that deeply about 24 it. It was mainly a sigh of relief on my part that we 25 weren't going to have to start from scratch to build up</p>
119	121
<p>1 were at from a security standpoint, it was obviously 2 much different than what I had seen before.</p> <p>3 Q. And what did you take his sentence in the very 4 next indented paragraph, in other words, the one that 5 begins after the second hash mark, he's talking again 6 about ADP's third-party approval and how they have been 7 developed. And the last sentence is what I would like 8 to -- the last two sentences are what I would like to 9 point your attention to. The second-to-last sentence 10 of the paragraph reads, "I am sure you will appreciate 11 the need to have R&R follow the same process and meet 12 the same standards. I believe that" -- I think the 13 word "this" should be here -- that "this is the same 14 point you make publicly."</p> <p>15 Did you interpret that to mean that he was 16 moving away from his position about -- his 17 laissez-faire position about allowing third parties on 18 to his system and that he was making reference to the 19 fact that this is something that you had made public 20 statements about?</p> <p>21 A. My interpretation of what this paragraph is all 22 about is that the 3PA system had been around for a 23 while but I had not known about it. And evidently, 24 it's something that they provided to very large 25 customers, large groups, chain dealerships. Auto</p>	<p>1 an interface.</p> <p>2 Q. The next paragraph -- the next paragraph on the 3 first page of this paragraph that's not indented 4 begins -- and this is the one that you referenced 5 before I had even asked a question about the exhibit, 6 the "I should point out" paragraph, and I would like to 7 turn your attention to the last two sentences of that 8 paragraph. The second-to-last sentence says, "I would 9 be remiss not pointing out that R&R is accessing the 10 ADP system through a contract with Authenticom and has 11 been doing so for quite some time without an agreement 12 from ADP. We need to clean this up as well."</p> <p>13 What did you interpret those two sentences to 14 mean?</p> <p>15 A. Well, there is no question we had been using 16 Authenticom on a very small scale to provide service 17 reminder follow-up data, addresses and names of 18 customers that own vehicles that sign up to have an oil 19 change or have a 100,000 mile checkup or whatever.</p> <p>20 As far as what arrangements that Authenticom 21 had, that was beyond our vision. We don't get to see 22 what Authenticom does or was doing at that time. And 23 what he's saying here in so many words is that 24 Authenticom doesn't have a contract with us. 25 Authenticom is acting as a hacker into CDK's systems.</p>
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<p>1 And he's being fairly gentle about pointing that out 2 because we truly didn't understand what Authenticom was 3 doing, what permissions they had and which ones they 4 didn't.</p> <p>5 Q. When he said "we need to clean this up as 6 well", is he suggesting that you need to stop using 7 Authenticom to access the CDK system?</p> <p>8 A. That was my interpretation.</p> <p>9 Q. And did this suggest to you that CDK was moving 10 away from its laissez-faire attitude about third 11 parties and was going to take a stricter approach in 12 terms of not allowing third parties to hack into its 13 system?</p> <p>14 A. I wouldn't say that I perceived that at this 15 point. It wasn't until they started publicly 16 announcing 3PA that I took notice.</p> <p>17 Q. Why would he be e-mailing you that you needed 18 to clean this up as well if CDK wasn't interested in 19 stopping the use of third-party integrators on its 20 system?</p> <p>21 A. Again, I don't think I thought that deeply. 22 This was -- at this stage of this project, you know, my 23 efforts were pretty much done because I forced the 24 issue with Steve Anenen. And after that I'm backing 25 away because I'm on to whatever the next hill is.</p>	<p>122</p> <p>1 answer is not going to change. 2 THE WITNESS: Can I declare a timeout? 3 (A recess was taken.) 4 BY MR. ABRAHAMSEN:</p> <p>5 Q. Before the break we were talking about CX 1143 6 and how it had followed a telephone conversation you 7 had had with Mr. Anenen. In that telephone 8 conversation with Mr. Anenen, had he said anything that 9 led you to believe that CDK was no longer going to take 10 a laissez-faire attitude about third-party integration 11 on its DMS system and was going to be adopting a system 12 where they would no longer permit third parties to 13 integrate on its system?</p> <p>14 A. We never had any conversation about that. When 15 I finally learned about it, I wasn't surprised because 16 I thought the way they were doing it before was really 17 stupid from a security standpoint. And probably from a 18 general background statement, I consider really 19 everything that CDK does to be inferior. And that's -- 20 I have been competing with them now since 1975. So 21 therefore, I don't spend any time, quote, watching what 22 CDK does. I find it humorous that they turn over chief 23 executive officers as often as they do. But other than 24 that, as far as operationally or technically, whatever, 25 I pay no attention to what they do.</p>
<p>1 Q. This notion that Reynolds had been using 2 Authenticom and that CDK was going to ask you to clean 3 that situation up, was that a topic that you and 4 Mr. Anenen had discussed on the telephone?</p> <p>5 A. I'm sorry, I don't recall whether we did or 6 didn't. But it was absolutely clear what he was saying 7 in this letter.</p> <p>8 Q. That the third-party integration that had been 9 going on would not be allowed to continue?</p> <p>10 A. Yes.</p> <p>11 Q. Was that something you talked to Mr. Anenen 12 about, whether CDK was also, in addition to seeing to 13 it that Reynolds stopped using third-party integration 14 on its system that CDK was also going to stop being so 15 laissez-faire about other parties using third-party 16 integration on the CDK system?</p> <p>17 A. Again, I'm not perceiving that far deep into 18 this letter. I'm -- again, I think I'm out of this 19 project and I'm on to the next one.</p> <p>20 Q. I can't remember how I started my question, so 21 I'm going to maybe ask the same question, but I don't 22 think so.</p> <p>23 MR. COHEN: You have asked the same question 24 for about 45 minutes in several different ways, and I 25 haven't objected once and I'm not going to. But the</p>	<p>123</p> <p>1 Q. You mentioned in a prior answer that you had 2 learned about CDK's 3PA program from people who report 3 to you. Who would that have been?</p> <p>4 A. Probably Bob Schaefer.</p> <p>5 Q. Let me ask you to take a look at a document 6 we've marked as CX 4036. The Exhibit CX 4036 has Bates 7 REYCID0264663, and my understanding is that these are 8 notes that you prepared for yourself to deliver remarks 9 at a sales meeting on July 14, 2014; is that correct?</p> <p>10 A. Yes, that's correct.</p> <p>11 Q. I wanted to ask you to take a look at the 12 second page of the Exhibit CX 4036-002, and at the 13 bottom of the page there is a paragraph titled 14 Security. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. The second bullet down talks about the early 17 stages of negotiating an agreement, and it says it's a 18 similar agreement. When you say similar agreement, is 19 that a reference to the reference in the first bullet 20 that Reynolds had reached an agreement with 21 Mr. Batista?</p> <p>22 A. Yes, the most important part of which is that 23 Phil Batista, since lost in court, was no longer going 24 to be hacking Reynolds' sites and there was going to be 25 an orderly stand down. And that was the way it looked</p>

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1	like the agreement with ADP would take place. It would 2 be similar. 3 Q. So you had had a court case going against 4 Mr. Batista, and then ultimately you settled that court 5 case?	1	documents, is very organized, very structured, has 2 contracts. The 3PA system provides for ADP to 3 understand exactly what data is being extracted from 4 systems. And I think they probably started to become 5 aware of what was happening from a hacking standpoint 6 of their DMS system.
6	A. I don't know who brought it in the first place, 7 whether it was us or whether it was Mr. Batista. And 8 the final disposition, whether it was a settlement or 9 whether it was an agreed verdict, I'm not aware. 10 Q. And the reference in the first bullet "reached 11 an agreement where Phil is getting out of the 12 business", is that what you would call a wind down 13 agreement with Mr. Batista?	7	Q. You said in a prior answer that 3PA had been 8 around for a while. It's just that you hadn't heard of 9 it.
14	A. Yes. 15 Q. And were the terms basically that he would stop 16 doing integration on Reynolds but he would do so in a 17 way that allowed his clients to continue to do the 18 integration for a period of time until they could move 19 into the RCI program?	10	A. Well, I made that statement based on the fact 11 that it was a pretty complete definition of how it 12 ought to be done. And that's not typically something 13 you start with on day one. So therefore, it was -- I 14 can't tell how mature it was, but it was certainly past 15 starting, for sure.
20	A. Yeah. It was an orderly stand down would be 21 the way I would characterize it. 22 Q. And Mr. Batista, his company is SIS?	16	Q. But your comments that you are going to make to 17 your salespeople are sort of -- make it sound to me 18 that because you say ADP seems to be becoming aware of 19 the laws, that there was something recent.
23	A. Yes. 24 Q. The third hash mark down under security on 25 CX 4036-002 states, "ADP seems to be becoming aware of	20	A. It was recent knowledge to me. 21 Q. And what was it about the existence of the 3PA 22 program that gave you insight into ADP's thinking about 23 the laws?
		24	A. Well, as far as compliance with the law, my 25 belief is that to do it legally, you got to have
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1	the laws and liabilities involved." Do you see that?	1	contracts, you got to have definitions, you got to have 2 an explicit listing of what data fields are going to be 3 removed from the DMS system. And this is -- the fact 4 that there was the existence of the 3PA at all was at 5 variance with what the status quo had been as far as my 6 knowledge is concerned.
2	A. This is in the last section titled Security? 3 Q. It's the third hash mark down.	7	And talking to the salespeople, the point I'm 8 trying to make is that, well, it kind of looks like 9 that CDK is going to have a formal process, and 10 therefore, they are not going to be able to throw rocks 11 at us for having a formal process, which the sales 12 force are the people that take the stones on this 13 particular subject. That's why I was telling them that 14 it looked like the world is perhaps changing.
3	A. Yes, I see that. 4 Q. What did you mean by ADP seems to be becoming 5 aware of the laws?	15	Q. And you talked in this same sentence about 16 liabilities, that ADP seems to be becoming aware of the 17 laws and liabilities. What liabilities were you 18 referencing?
4	A. The very existence, which was in relatively 5 recent news to me, was the fact that the 3PA program 6 existed at all and the fact that they were talking 7 about that. Again, that was new news to me or 8 relatively new. 9 Q. What laws were you referring to?	19	A. Well, the very fact that the 3PA agreement 20 meant to me that they were changing their previous 21 positions of laissez-faire, and that has -- if you 22 describe laissez-faire from a business standpoint, it's 23 treacherous because if there's a breach and you 24 don't -- you are operating without contracts and 25 without definitions of who is doing what, it makes for
5	A. The ones -- and I should know the names of 6 them, but the ones that were discussed in the document 7 produced by NADA. 8 Q. And had you talked to Mr. Anenen about the 9 applicability of those laws?		
6	A. No. I just had disagreed with the way it was 7 interacting with our systems. 8 Q. But you told your sales force that ADP seems to 9 be becoming aware of the laws. What was your basis for 10 saying that?		
7	A. The fact that I had become aware of the 3PA. 8 Q. What did 3PA have to do with laws?		
8	A. Well, 3PA is, as we've seen in just prior		

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1 a really messy situation as far as liability is 2 concerned. 3 Q. Liabilities like the ones we talked about 4 yesterday where if a third party sent data into the 5 wrong hands, the DMS is the deep pocket? 6 A. Exactly. 7 Q. And you state in the next hash mark down, "This 8 could put the security wars very much behind us." Is 9 this referencing back to the prior bullet about ADP 10 becoming aware of the laws and liabilities? 11 A. I would say that would be correct. 12 Q. Let me ask you to take a look at CX 4037. 13 CX 4037 has Bates REYCID0513201, and it appears to be 14 an e-mail from Mr. Schaefer to Mr. Brockman. It's 15 dated September 11, 2014. 16 A. The print on this one is really small. Yes. 17 Q. The exhibit has a paragraph that contains four 18 numbered paragraphs, the longest of which is number 4, 19 which starts out "CDK also wants to begin discussing 20 the tactical direction for the following." And this 21 is -- these are subjects that are being negotiated 22 between CDK and Reynolds with regard to what ultimately 23 becomes a contract that's signed in February of 2015; 24 is that correct? 25 A. Yes, that's correct.		1 A. I don't know that. We don't have that 2 information. They don't tell us that, but they infer 3 that. But as far as what prices SIS was charging, we 4 don't know. 5 Q. Well, did you know what price you were paying 6 Authenticom to integrate apps on to the CDK system? 7 A. I was not personally aware of that, it was such 8 a minor piece of business. Reminder cards is not 9 really a huge deal. I think we pay more for the 10 postcard than the rest of it. 11 Q. Was it generally the case that the third-party 12 integrators were charging less than what 3PA and RCI 13 were going to be charging for integration? 14 A. I don't have direct knowledge of that, but I 15 wouldn't be surprised if that was the case. 16 Q. The next paragraph down, in other words, 4C, 17 talks about communication plan and marketing 18 announcement, and the first clause of the sentence 19 under paragraph i says, "How will the agreement be 20 announced to the market." 21 What was the issue with regard to announcing 22 the agreement to the market? 23 A. CDK was very, very sensitive -- this was their 24 issue, was very, very sensitive about how all this was 25 going to happen. We are not, you know, marketing kind	
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1 Q. And the paragraph B starts out "RCI pricing, 2 minimums, et cetera," and has one little subparagraph 3 under it. And there's a reference in the -- well, it's 4 the first sentence, but it's a very long sentence and 5 there's some dashes, and it's talking about Menu 6 Advantage [sic], and then the sentence continues, Their 7 contract is not up with SIS until July 2015. 8 Was this a reference to CDK using SIS to 9 integrate Menu Advantage on Reynolds' DMSes? 10 A. Yes, that's correct. 11 Q. And was this integration by SIS subject to the 12 wind down agreement, as far as you know? 13 A. I'm not sure about that. What I think is 14 happening here is that Phil Batista and SIS, Phil is a 15 snake, and it looks to me like that CDK has finally 16 become aware of his true qualities and nature, and they 17 are deciding they want to move to a place where they 18 are not doing business with him anymore, which I'm not 19 surprised. 20 Q. The sentence goes on and -- I know you didn't 21 write this, but I appreciate your interpreting it for 22 us. It says that when they go with Reynolds, they'll 23 be paying Reynolds a much higher price than what SIS is 24 currently charging them. How much higher price would 25 CDK pay Reynolds compared to what it was paying SIS?	1 of folks. We are programmers and technical kind of 2 folks, and this was not something that we brought up. 3 It was their issue. And at this point we had not given 4 the slightest thought to that there would even be a 5 marketing program around an announcement, but that's 6 their deal. So we were not opposed to that. 7 Q. What would the announcement be if Reynolds 8 could get its -- what would Reynolds want the public 9 announcement to say? 10 A. We would not want it to say anything as far as 11 we are concerned. We would be just as happy if it 12 didn't exist. 13 Q. Is this something you discussed with 14 Mr. Schaefer? He's writing you this e-mail that 15 contains this sentence. 16 A. I would say probably we did, and probably I 17 would have communicated exactly what I have 18 communicated to you. We are not spinmeisters. 19 Q. The impression I get from having read documents 20 in this matter is that Mr. Schaefer thought that a 21 public announcement was very important to you. Do you 22 know why we would see that in the documents given what 23 you have stated about the lack of enthusiasm for a 24 public announcement that you are testifying about? 25 A. Well, I'm sure I would have talked to Bob		

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<p>1 Schaefer about this issue. But again, a joint 2 marketing announcement with CDK is not something I get 3 all, you know, wet and tingly about. 4 Q. The notion that there would be an announcement 5 that CDK was no longer being agnostic about third 6 parties integrating on its platform would seem to be 7 beneficial to Reynolds in the sense that it would be 8 public acknowledgment that they were no longer going to 9 be throwing rocks at you for your stance on security. 10 A. I would think that that would be the furthest 11 thing from their mind because they are the ones that 12 want to do it, which means they are going to want it to 13 be favorable to them. And anything that's favorable to 14 them is unfavorable to us. Anything that's favorable 15 to us would be unfavorable to them. 16 Q. Well, what would be favorable to you in terms 17 of an announcement? 18 A. Nothing. No announcement. That would be our 19 preference. 20 Q. You wouldn't want an announcement that CDK was 21 going to stop coming into your system unauthorized? 22 A. I don't think that there was any way in the 23 world that CDK would admit that in a marketing 24 announcement. I mean, it would be like a public 25 confession that they were hackers and had been hackers</p>	<p>1 A. I don't think so, but probably at this point 2 I'm not far enough along in thinking about how the 3 whole thing is going to wind down because again, as I 4 have said before, I was around a lot in the beginning. 5 There was a pile on my desk in the beginning, but once 6 it got past the point there wasn't a pile on my desk 7 anymore, I got other piles to work on. At this point 8 it's in the later stage of the whole situation. 9 Q. Right, but early on in the process is there 10 anything you could have said to Mr. Schaefer that would 11 have given him the impression that Reynolds wanted to 12 be having a public statement about the agreement with 13 CDK? 14 A. Well, I think that there's -- Bob Schaefer 15 feels much more strongly about that than even I do. 16 And quite possibly we might have had a conversation, 17 but when it comes down to the final thing, CDK wanted 18 so much means that automatically it's good for them and 19 it's not good for us when you really in the cold, clear 20 light of day and you think about it. But prior to the 21 cold, clear light of day, it's possible I have had 22 conversations with -- and we thought that it might have 23 been a good idea. But when you really think about it, 24 it's not. 25 Q. Let me ask you to take a look at CX 4273.</p>
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<p>1 for years. I mean, there's no way in the world they 2 would have agreed to let that be any part of a press 3 announcement. 4 Q. I have noticed from reading the final agreement 5 that it says that both companies will agree on press 6 releases. Was that something Reynolds wanted the 7 agreement to say or was that -- 8 A. Well, what it is, it's a tit for tat. They 9 would want it to say that they could agree and approve 10 it, and we would say, no, it's got to be joint which 11 means if we didn't like it, it would not happen. It's 12 one of those kind of situations where you got two 13 parties and it has to be unanimous consent or nothing 14 happens. 15 Q. Was that a provision that Reynolds felt 16 strongly about having in the agreement? 17 A. Certainly I would have thought so. I'm not 18 aware exactly how it was handled in the final 19 agreement, but I would hope that our legal department 20 would be diligent enough to not give CDK a one-sided 21 ability to approve anything. 22 Q. Is there anything that you could have said to 23 Mr. Schaefer that would have given him the impression 24 that you were strongly in favor of a public 25 announcement about the agreement with CDK?</p>	<p>1 CX 4273 has Bates REYCID0675646. It's entitled 2 Settlement Agreement, and the subtitle is The Reynolds 3 & Reynolds Company versus Superior Integrated 4 Solutions, Inc., and then it gives the court that the 5 settlement is in front of. 6 A. (Reviewing document.) 7 Q. Mr. Brockman, the document, the settlement 8 agreement that I have shown you at CX 4273 on page 007 9 of the document, it indicates that it was agreed to on 10 the 5th day of March 2014. And I guess my question is, 11 is the settlement agreement the agreement you were 12 referring to in CX 4036, which was your statement to 13 the sales executives on July 14, 2014? 14 A. Yes, I believe that's the case. 15 Q. And you had mentioned in a prior answer that 16 Mr. Batista ran a company called SIS. And just for the 17 record, SIS is the acronym for Superior Integrated 18 Solutions, Inc.; is that correct? 19 A. Correct. 20 Q. What exactly was SIS doing with regard to its 21 interactions with the Reynolds system? 22 A. It was one of the Japanese manufacturers, I 23 think it was Subaru, had plans for building what I 24 would call a wrapper around the DMS system so that the 25 user interfaces would be exactly like Subaru wanted.</p>

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1 It would be Subaru-specific. And what SIS had agreed
 2 to do involved really getting into our system in much
 3 greater detail than anybody else had ever attempted.
 4 And this settlement basically we thought we killed the
 5 snake here. Unfortunately, we've not killed the snake.

6 Next time around Phil Batista got really,
 7 really clever, because he was banned from the RCI
 8 system forever because -- as part of this settlement.
 9 But I mean, he created an absolute fraud. He went out
 10 and had another company created that achieved RCI
 11 status and then he used them to collect all the data as
 12 opposed to him doing it directly in contravention of
 13 what he agreed to here and started selling an interface
 14 for a product called Darwin, which we touched on, I
 15 think, maybe perhaps the first day.

16 And what Darwin is, is a system that competes
 17 in a way against DocuPad. What it does is it handles
 18 presentation of products, aftersale products to the
 19 consumers. And we mentioned the fact that its major
 20 drawback is it can't recompute the payments based upon
 21 what's either bought or decided not to buy as part of
 22 the aftersale process, extended warranties, all that
 23 manner of stuff.

24 And wildly enough, he had gotten some fairly
 25 large Reynolds accounts to buy Darwin. And we were

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1 A. It was different in some respects. I can't
 2 tell you specifically what they were, but Phil is much
 3 smarter than the folks at CDK. And my view of the
 4 situation, I was under the impression that it was a
 5 more sophisticated approach.

6 **Q. I have seen in the documents the phrase "code
 7 on the box." Are you familiar with that phrase?**

8 A. Very much so. It is very, very unpleasant as
 9 far as we are concerned.

10 **Q. Would that be an accurate description of how
 11 SIS was accessing the Reynolds DMS?**

12 A. I'm not clear as to exactly from a technical
 13 standpoint how that was done. I would expect Bob
 14 Schaefer to know.

15 MR. COHEN: Mr. Abrahamsen, can we take our
 16 hourly break?

17 MR. ABRAHAMSEN: Yes.

18 (A recess was taken.)

19 BY MR. ABRAHAMSEN:

20 **Q. So we were speaking before the break at
 21 CX 4273, which is the settlement agreement with SIS.
 22 Was SIS integrating other third-party apps on to the
 23 Reynolds system? You mentioned the Subaru one, so
 24 referring to others than the Subaru one you mentioned.**

25 A. I'm not aware that they were. We had ample

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1 then our rights -- I mean, he clearly violated
 2 everything in the book, but we couldn't shut him down
 3 because of the nature of the customers that he already
 4 had, which were also our customers. Had to shut the
 5 whole thing down. So we entered into a new stand down
 6 agreement, and I think it's coming up sometime early
 7 next year where he stands down once again. It's a
 8 miserable deal, and I hated to settle with him, but
 9 from a business standpoint, we were just compelled to.

10 **Q. You didn't want to settle with him because that
 11 would mean he would get the benefit of the wind down
 12 period; is that correct?**

13 A. Yeah.

14 **Q. You said from a business standpoint, you had to
 15 settle with him?**

16 A. Well, because of the relationships with our --
 17 his customers that's also a big customer of ours.

18 **Q. Which customer was it, if you recall?**

19 A. I'm sorry, I don't remember, but it was a
 20 significant customer. And I think there was more than
 21 one.

22 **Q. Was SIS accessing the Reynolds DMS in a way
 23 that was technologically different than the way, say,
 24 DMI, IntegraLink and Authenticom were accessing the
 25 system?**

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1 evidence of Subaru. More than enough. So he could
 2 have been doing other ones that we would not know
 3 about. We would have no practical way to understand
 4 what else he might be doing.

5 **Q. Let me ask you to take a look at page 003 of
 6 CX 4273, and there's a paragraph, well Roman V, so like
 7 a V. And I was looking at the first sentence of that
 8 long paragraph, and there's a first clause, and then
 9 the sentence continues after the parenthetical "SIS and
 10 Mr. Batista, on behalf of themselves and their
 11 employees and affiliates, covenant and agree not to
 12 integrate with, access or attempt to integrate with or
 13 access any Reynolds-brand DMS."**

14 A. Now we think we've got him.

15 **Q. So this is a prohibition on Mr. Batista and his
 16 company integrating on the Reynolds DMS?**

17 A. Yes.

18 **Q. And then the next sentence states, "SIS and
 19 Mr. Batista further covenant and agree not to sell,
 20 transfer or assign to any affiliate or third party any
 21 technology or know-how regarding integration with
 22 Reynolds-brand DMS." And it goes on. What is this
 23 prohibition aimed at?**

24 A. The same that him accessing Reynolds DMSes, DMS
 25 systems in any way forever.

8 (Pages 138 to 141)

<p>1 Q. And what's the reference to third parties?</p> <p>2 A. He won't assist third parties with technology</p> <p>3 or know-how.</p> <p>4 Q. And what was the concern about technology and</p> <p>5 know-how with regard to third parties that you are</p> <p>6 trying to address in this paragraph?</p> <p>7 A. We believed at that time and still do that Phil</p> <p>8 is very smart and he is technologically the most</p> <p>9 superior hacker, as far from a technology and knowledge</p> <p>10 standpoint, better than DMI and IntegraLink.</p> <p>11 Q. And what third parties are you trying to</p> <p>12 address in this paragraph?</p> <p>13 A. People that are doing the same thing or similar</p> <p>14 things that Phil Batista is doing, which we would like</p> <p>15 to think we were aware of all of them, but that's not</p> <p>16 necessarily the case.</p> <p>17 Q. Then further down after there's a reference to</p> <p>18 paragraph 3.A.v, and the sentence states that the</p> <p>19 covenants set forth are not intended as a covenant not</p> <p>20 to compete but rather as a contractual restriction of</p> <p>21 access and attempted access intended to protect the</p> <p>22 operational and data security -- I'm sorry, yeah, data</p> <p>23 security integrity of the DMS. What is that a</p> <p>24 reference to?</p> <p>25 A. I think that that is just stating further again</p>	<p>1 entity is, but I personally don't know the name of it.</p> <p>2 Q. And is the entity you are referring to, is it</p> <p>3 gaining access to the Reynolds DMS through the same</p> <p>4 type of technique that SIS was using or is it going in</p> <p>5 through RCI?</p> <p>6 A. It's my understanding that this straw entity</p> <p>7 had an RCI agreement and essentially used the power in</p> <p>8 that RCI agreement to do what Phil Batista wanted to</p> <p>9 get done. And they did it and turned everything over</p> <p>10 to him on an ongoing basis the data that was required</p> <p>11 for the product that he had built, which is either this</p> <p>12 paragraph V is defective and the lawyer missed that</p> <p>13 point or there's a case of fraud and deception. I</p> <p>14 believe it's a case of fraud and deception.</p> <p>15 Q. Let me show you three exhibits. These are the</p> <p>16 three contracts that were executed between CDK and</p> <p>17 Reynolds. We'll go through them one at a time,</p> <p>18 obviously, but perhaps for the economy of time, we'll</p> <p>19 just put them all on the record now and then I'll ask</p> <p>20 my various questions about them as we go forward.</p> <p>21 MR. COHEN: Then we'll have them all in front</p> <p>22 of him, sure.</p> <p>23 MR. ABRAHAMSEN: And they are CX 4045, which is</p> <p>24 the Data Exchange Agreement; CX 4152, which is the 3PA</p> <p>25 Agreement; and Exhibit 4153 which is the Reynolds</p>
<p>143</p> <p>1 in a different way that he's not going to access</p> <p>2 Reynolds' DMS systems. Whoever wrote this paragraph v</p> <p>3 made a very serious effort to contractually lay that</p> <p>4 down. And again, we thought we had killed the snake,</p> <p>5 but we didn't.</p> <p>6 Q. When you say "lay that down" in that answer,</p> <p>7 you mean lay down the prohibition about Mr. Batista</p> <p>8 accessing your DMS?</p> <p>9 A. That's correct.</p> <p>10 Q. And the next sentence says, "These covenants</p> <p>11 are intended to extend for the life of any Reynolds DMS</p> <p>12 product." And that's just what you referenced in an</p> <p>13 earlier answer, that you wanted this to extend for as</p> <p>14 long as Reynolds was in the DMS business?</p> <p>15 A. Correct.</p> <p>16 Q. You mentioned in a prior answer that</p> <p>17 Mr. Batista sought access to the Reynolds DMS after</p> <p>18 this settlement agreement was reached, which was in</p> <p>19 2014. What was the name of the entity that later tried</p> <p>20 to get access to the Reynolds DMS?</p> <p>21 A. I don't remember the name of the entity which</p> <p>22 essentially was a straw entity, which is how he got</p> <p>23 access. Basically that straw entity did all the</p> <p>24 accessing and fed him the data that he needed for the</p> <p>25 application that he was building. We know what that</p>	<p>145</p> <p>1 Interface Agreement.</p> <p>2 CX 4152 has Bates REYREY0000091. CX 4153 has</p> <p>3 REYREY0000025. And CX 4045 has Bates REYREY0000012.</p> <p>4 BY MR. ABRAHAMSEN:</p> <p>5 Q. Before we plunge into the actual words in the</p> <p>6 contracts, let me ask you a broader question. Just</p> <p>7 could you state for the record what your role was with</p> <p>8 regard to these contracts.</p> <p>9 A. Very minimal.</p> <p>10 Q. Who was responsible for having these contracts</p> <p>11 come into being for Reynolds?</p> <p>12 A. Bob Schaefer.</p> <p>13 Q. Anyone else?</p> <p>14 A. I don't know to what extent our legal</p> <p>15 department played in actually constructing the</p> <p>16 contracts. Again --</p> <p>17 Q. I meant my question to kind of exclude the</p> <p>18 legal department. I'm sorry, I should have made that</p> <p>19 more explicit. And I intentionally cut you off.</p> <p>20 MR. COHEN: Thank you. I was listening and I</p> <p>21 was comfortable with Mr. Brockman's response, but I</p> <p>22 appreciate your safeguarding the privilege. And the</p> <p>23 fact that he consults lawyers for legal contracts is</p> <p>24 hardly earth shattering.</p> <p>25 BY MR. ABRAHAMSEN:</p>
<p>142</p> <p>1 Q. And what's the reference to third parties?</p> <p>2 A. He won't assist third parties with technology</p> <p>3 or know-how.</p> <p>4 Q. And what was the concern about technology and</p> <p>5 know-how with regard to third parties that you are</p> <p>6 trying to address in this paragraph?</p> <p>7 A. We believed at that time and still do that Phil</p> <p>8 is very smart and he is technologically the most</p> <p>9 superior hacker, as far from a technology and knowledge</p> <p>10 standpoint, better than DMI and IntegraLink.</p> <p>11 Q. And what third parties are you trying to</p> <p>12 address in this paragraph?</p> <p>13 A. People that are doing the same thing or similar</p> <p>14 things that Phil Batista is doing, which we would like</p> <p>15 to think we were aware of all of them, but that's not</p> <p>16 necessarily the case.</p> <p>17 Q. Then further down after there's a reference to</p> <p>18 paragraph 3.A.v, and the sentence states that the</p> <p>19 covenants set forth are not intended as a covenant not</p> <p>20 to compete but rather as a contractual restriction of</p> <p>21 access and attempted access intended to protect the</p> <p>22 operational and data security -- I'm sorry, yeah, data</p> <p>23 security integrity of the DMS. What is that a</p> <p>24 reference to?</p> <p>25 A. I think that that is just stating further again</p>	<p>144</p> <p>1 entity is, but I personally don't know the name of it.</p> <p>2 Q. And is the entity you are referring to, is it</p> <p>3 gaining access to the Reynolds DMS through the same</p> <p>4 type of technique that SIS was using or is it going in</p> <p>5 through RCI?</p> <p>6 A. It's my understanding that this straw entity</p> <p>7 had an RCI agreement and essentially used the power in</p> <p>8 that RCI agreement to do what Phil Batista wanted to</p> <p>9 get done. And they did it and turned everything over</p> <p>10 to him on an ongoing basis the data that was required</p> <p>11 for the product that he had built, which is either this</p> <p>12 paragraph V is defective and the lawyer missed that</p> <p>13 point or there's a case of fraud and deception. I</p> <p>14 believe it's a case of fraud and deception.</p> <p>15 Q. Let me show you three exhibits. These are the</p> <p>16 three contracts that were executed between CDK and</p> <p>17 Reynolds. We'll go through them one at a time,</p> <p>18 obviously, but perhaps for the economy of time, we'll</p> <p>19 just put them all on the record now and then I'll ask</p> <p>20 my various questions about them as we go forward.</p> <p>21 MR. COHEN: Then we'll have them all in front</p> <p>22 of him, sure.</p> <p>23 MR. ABRAHAMSEN: And they are CX 4045, which is</p> <p>24 the Data Exchange Agreement; CX 4152, which is the 3PA</p> <p>25 Agreement; and Exhibit 4153 which is the Reynolds</p>

<p>1 Q. But were there any other businesspeople 2 involved in negotiating these contracts with CDK other 3 than Mr. Schaefer?</p> <p>4 A. Not that I'm aware. Certainly all discussion I 5 had about the subject was with Bob Schaefer.</p> <p>6 Q. Let me ask you to take a look at CX 4152 and 7 ask you to look at CX 4152-016. I believe my questions 8 will continue on. We'll have the same questions for 9 the next several pages.</p> <p>10 In the first part of the document, Section 1: 11 List of Third Party Access Utilized, and then there's 12 several entries. Extract Inventory Vehicles - Batch, 13 what is this part of the contract referring to?</p> <p>14 A. This would be they keep vehicle inventories in 15 a separate area inside their database, and the access 16 would be to -- on a batch basis. And by batch, that's 17 when you have a program that runs that copies records 18 from one file into another file, and it does it without 19 benefit of any screen interaction. That's why it's 20 called batch.</p> <p>21 Q. Is this part of the contract starting with 22 CX 4152-016, are these Reynolds applications that are 23 going to be integrated into the CDK DMS through 3PA?</p> <p>24 A. I'm under the impression that these are records 25 that will come out of 3PA and be used in a marketing</p>	<p>146</p> <p>1 A. That is the service that prepares service 2 reminder cards to be sent out to the consumers 3 encouraging them to bring their vehicles in for 4 50,000-mile service or winterizing or de-winterizing, 5 that sort of thing.</p> <p>6 Q. And after the contract is signed, ReminderTRAX 7 would be getting data from CDK DMSes through 3PA; is 8 that correct?</p> <p>9 A. That's correct.</p> <p>10 Q. Let me ask you to flip to the first page of the 11 Exhibit CX 4152-001, and under Background in the second 12 paragraph it says, Vendor provides its application 13 programs" and then there's a parenthetical "as further 14 described in section 2 of Exhibit 3PA-B, including 15 all subparts, the applications, close quote, to certain 16 CDK clients. So those are the Reynolds applications we 17 were starting to look at a couple of questions ago; is 18 that correct?</p> <p>19 A. That's correct.</p> <p>20 Q. Let me ask you to look at CX 4152-004, and 21 actually it's paragraph E on that page. And I'm going 22 to ask you whether this paragraph prohibits Reynolds 23 from using hostile integrators for its applications. 24 And I draw your attention to the first -- well, there's 25 a sentence ten lines down in subparagraph E --</p>
<p>147</p> <p>1 application in our marketing arm.</p> <p>2 Q. And what is your marketing arm?</p> <p>3 A. Naked Lime Marketing.</p> <p>4 Q. So Naked Lime Marketing will get data from CDK 5 DMSes through 3PA?</p> <p>6 A. Yes.</p> <p>7 Q. And could you just go through the next couple 8 of pages and just tell us what the other applications 9 are? For instance, number 2 on CX 4152-017 appears to 10 be Naked Lime Web.</p> <p>11 A. I'm sorry, I'm not following where I'm supposed 12 to be.</p> <p>13 Q. CX 4152-017, there's a numbered paragraph in 14 the middle of the page, number 2, Application Served.</p> <p>15 A. Yes.</p> <p>16 Q. What is Naked Lime Web?</p> <p>17 A. That's where we have a service which creates 18 and maintains the website for a dealership, which is a 19 very important part of their marketing.</p> <p>20 Q. And that would now be getting data through 3PA; 21 is that correct?</p> <p>22 A. Yeah. Vehicle inventory data, that's correct.</p> <p>23 Q. And flipping over to CX 4152-018, number 3 is 24 toward the top of the page and it's talking about 25 ReminderTRAX. What is that?</p>	<p>149</p> <p>1 MR. COHEN: I'm sorry, Dana, my assistant is 2 bringing me something. (Discussion off the record.)</p> <p>3 BY MR. ABRAHAMSEN:</p> <p>4 Q. I'm sorry, Mr. Brockman, I'm having difficulty 5 asking you to turn your attention to the sentence I 6 want to ask you about. It's ten lines down in 7 subparagraph E, and it begins, "Vendor agrees that it 8 will not".</p> <p>9 A. I'm sorry, I'm just not finding that. I'm 10 quite sure it's probably here, but this paragraph is a 11 killer.</p> <p>12 Q. I'm sorry.</p> <p>13 A. Typically what I do when I'm faced with having 14 to understand something like this is I get a copy in 15 Word and I go back through and wherever I think I need 16 new paragraph ought to start, I hit a return, and I end 17 up with something that's about this long, but you can 18 read it.</p> <p>19 Q. It's ten lines down in subparagraph E.</p> <p>20 A. Okay.</p> <p>21 Q. And I'm not going to read -- it's a long 22 paragraph and this is a long sentence. I'll ask you to 23 read that sentence and then answer my question, which 24 is whether this sentence is stating that Reynolds</p>

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<p>1 agrees not to use hostile integrators to get onto the 2 CDK system. 3 A. Yes, I see and understand that provision. 4 Q. Is my statement correct that that provision 5 prohibits Reynolds from hostilely integrating onto the 6 CDK system? 7 A. Yes, that's correct. 8 Q. Let me ask you to take a look at the second 9 exhibit in our series of three exhibits. It's CX 4153. 10 This is the Reynolds Interface Agreement. I'm going to 11 direct your attention to two provisions starting with 12 definition 1.8 on CX 4153-002, Non-Approved Access. Do 13 you see that definition? 14 A. Yes. 15 Q. And is that definition a provision that is 16 relevant to CDK getting direct or indirect access onto 17 the Reynolds system for applications? 18 A. (Reviewing document.) 19 Q. Mr. Brockman, let me ask you to take a look at 20 CX 4153-006. The very first provision on that page is 21 paragraph 2.5.3, Compliance With Certification. 22 A. I'm sorry, I'm a little bit lost. Could you 23 repeat the directions again. 24 Q. No problem. CX 4153-006, at the very top of 25 that page, the first provision, 2.5.3.</p>	<p>1 A. What it is, it is an anti-hacking provision. 2 And it's pointed not at CDK, but at anybody that CDK 3 might help or share information with. That's my 4 understanding. 5 Q. So when you say it's anti-hacking, what is 6 the -- what was the fear that was being covered by this 7 paragraph? 8 A. Well, what's happening in general with all 9 these agreements is that Reynolds and CDK have agreed 10 to provide RCI interfaces to each other under standard 11 terms and conditions. And what this specific provision 12 is all about is that not only do we agree not to hack 13 each other, to only use authorized interfaces, but to 14 not help or assist or teach anybody else how to hack 15 into CDK's systems or Reynolds' systems. That's the 16 whole thrust. 17 Q. So at this point does this paragraph, since it 18 applies to CDK and Reynolds, is this an indication to 19 you that CDK has moved away from its laissez-faire 20 attitude and is now concerned about hackers getting 21 into their system? 22 A. I hadn't thought about it in that light, but 23 yeah, I believe that you could see it that way. 24 Q. Let me ask you to look at paragraph 25 CX 4045-003, and I'm looking at paragraph 4.2,</p>	
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<p>1 A. Okay, I have got 2.5.3. 2 Q. Compliance With Certification. 3 A. Yes, I see that. 4 Q. Okay. I'm looking at the second clause of the 5 first sentence, "CDK acknowledges that any non-approved 6 access and/or non-approved use is strictly prohibited 7 and is considered a material breach of this RCI 8 agreement." Is this a prohibition on CDK using hostile 9 integration to get onto the Reynolds system? 10 A. That's correct. It's an anti-hacking 11 provision. 12 Q. Let me ask you to turn to our third agreement, 13 CX 4045, the Data Exchange Agreement. I'm going to ask 14 you -- you can take a look at any part of the agreement 15 you care to. I'm going to ask you questions about 16 paragraph 4.5, which begins on the very bottom of 17 CX 4045-004. 18 A. Okay. I'm on the page 4 of 13. 19 Q. Yes. 20 A. Okay. 21 Q. It's paragraph 4.5. It begins at the very 22 bottom of that page, Prohibition on Knowledge Transfer 23 and DMS Access. 24 A. Yes, I see and understand that. 25 Q. What is this paragraph intended to apply to?</p>	<p>1 Third-Party Communications. And my only purpose in 2 showing you this paragraph -- let me let you read the 3 paragraph. Then I'll propound my question. 4 A. 4.2 is the one being referred to? 5 Q. Yes. 6 A. Yes. 7 Q. We had spoken earlier about a provision that 8 the parties entered into where they would each have to 9 seek approval and gain approval from the other firm in 10 order to issue press releases. And I just thought I 11 would show this to you, since we hadn't had the 12 document in front of us at the time we were talking 13 about, and ask you whether this is the provision that 14 you understood me to be asking about when I asked you 15 about whether the agreement contained such a provision. 16 A. I'm afraid I'm a little lost. Could you 17 reiterate? 18 Q. Could you look at 4.2, the last sentence. It's 19 a sentence that runs onto the next page, and it begins 20 three lines up from the bottom of the page. And it 21 begins, "Prior to the dissemination of any written 22 press releases or market communications by either 23 party". And I'm going to skip over to the end of the 24 provision on the very top of 4045-004, "such press 25 releases or market communications shall be tendered to</p>	

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<p>1 the other party for its review and approval."</p> <p>2 A. Yes, I see that.</p> <p>3 Q. Are you familiar with it?</p> <p>4 A. Frankly, not. These documents, I was not involved at all in their preparation. I authorized them to be done so that the project could be finished and that we could get CDK to stop hacking into our systems. But as far as the content and the details inside these contracts, I was not personally familiar with -- I was not involved at all in the drafting, and therefore, I can't claim or disclaim knowledge about any particular piece. They got the job done. The mission was accomplished. And I look back on it as a successful effort.</p> <p>5 Q. You know, just sitting back and not, you know, staring at this document, did you have an understanding -- this was signed in February of 2018. So did you have an understanding in the February of 2015 time period that you had an agreement with CDK whereby you would both have to review, say, a press release before you put it out talking about the agreements that you had entered into?</p> <p>6 A. Frankly, I was not thinking very much about that at all. I had moved on mentally from this project at the time these documents were drafted.</p>	<p>1 look at it. CX 4176 is an e-mail from Mr. Thornhill to Mr. Schaefer and Mr. Martin dated February 26, 2015. It's an e-mail with an attachment.</p> <p>2 A. Yes.</p> <p>3 Q. CX 4176 is entitled -- well, the subject matter of the cover e-mail, I should say, is Revised One-Pager - CDK. Were you familiar with the drafting of this document?</p> <p>4 A. Not at all.</p> <p>5 Q. Have you seen this document before?</p> <p>6 A. Frankly, not. I don't believe I have.</p> <p>7 Q. Putting aside the actual physical document itself, were you aware of any undertakings at Reynolds to draft up a document to -- so people could communicate to various audiences what the CDK/Reynolds agreement contained?</p> <p>8 A. I don't believe that I was. Again, this is now substantially after the whole project got done contractually, and I'm even further away from what's happening in this area. All I know is that the general reports are, yep, it's working; yep, CDK is doing what they promised they would do. And therefore, not a problem. I'm on to the next subject.</p> <p>9 Q. I appreciate that, and I'm just going to use the document sort of as a way to ask you questions, but</p>
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<p>1 Q. Were there any press releases that Reynolds sent out about these agreements?</p> <p>2 A. I'm sorry, I don't have any knowledge in that regard. We may or may not have. I don't know.</p> <p>3 Q. And the same question for CDK. Did CDK send out any press releases about the agreements?</p> <p>4 A. I'm sorry, I don't know.</p> <p>5 Q. Did you come to have an understanding during the time period leading up to these agreements whether CDK had a message that they wanted to communicate to the market about these agreements?</p> <p>6 A. I'm sorry, I have no perception of even thinking about that. I was on to the next project.</p> <p>7 Q. Did you ever become aware of any exchanges of documents between Reynolds and CDK exploring whether to send communications to the Reynolds sales force?</p> <p>8 A. I'm sorry, I'm not aware of any such thing.</p> <p>9 Again, I was not active in this process. I had already moved on.</p> <p>10 (A recess was taken.)</p> <p>11 BY MR. ABRAHAMSEN:</p> <p>12 Q. I would like to show -- Mr. Brockman, I would like to show you what we've marked as CX 4176 and ask you to take a look at it. It's a new exhibit. CX 4176 has Bates REYCID0046837. I would ask you to take a</p>	<p>1 I'm appreciative of the fact that you haven't seen it. You are not familiar with it. And I understand your explanation and I will try not to belabor this line of questioning, but I would like to ask you a couple questions based on the document even though you are not familiar with it.</p> <p>2 A. Sure.</p> <p>3 Q. I would ask you to turn to CX 4176-004. And the first box on the page has in the far right-hand column Scenario: Media outlets find out about the CDK/Reynolds agreement.</p> <p>4 A. Yes.</p> <p>5 Q. To your knowledge, were the agreements ever the subject of a media inquiry?</p> <p>6 A. I don't recall specifically other than I think that there was something. But exactly how big it was and what all it contained, I don't remember if I ever saw it.</p> <p>7 Q. Were you asked to give a statement to the media?</p> <p>8 A. No.</p> <p>9 Q. The response as indicated in this same box is that ensure CDK and Reynolds market message align. Do you know what that's a reference to?</p> <p>10 A. Other than what it says in that sentence, no.</p>

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1	It says what it says. I agree that what it says was 2 appropriate, but I had no more specific knowledge about 3 it.	1	anymore.
4	Q. Did you ever have any communications in this 5 February 2015 time period with anyone at CDK about 6 aligning the market messaging?	2	Q. We looked earlier today at an e-mail exchange 3 you had with Mr. Anenen which was sort of, I believe, 4 in late June, early July of 2014. So with that as a 5 milepost and February of 2015 when the agreements were 6 signed, can you give me any idea of where in that time 7 period you became less engaged in the actual 8 negotiations of the contracts?
7	A. I don't believe so.	9	A. I would say probably -- I would have periodic, 10 not scheduled discussions with Bob Schaefer about 11 what's going on. And one of my questions would be were 12 the contract negotiations reaching final stages. So it 13 would be whenever that was happening date-wise. That 14 would be when I was beginning to detach and move on to 15 the next project.
15	Q. The next bullet down says, "Access to DMS by 16 dealers' DMS provider only." Do you know what that's a 17 reference to?	16	Q. In terms of details about drafting the 17 contracts, what issues were you engaged on in that time 18 period after the July -- e-mails in July and the 19 signing of the contract? Were there issues that came 20 to your attention that needed to be resolved?
18	A. Okay, this is the second block down?	21	A. Not that I recall.
19	Q. The first block, second bullet down under 20 Response.	22	Q. Where is your office located?
21	A. Okay. Yes, I see that.	23	A. I live at home.
22	Q. Is that a reference to the Reynolds position 23 that only people who have an RCI agreement are allowed 24 to access the Reynolds DMS?	24	Q. I live at home too.
25	A. That's correct. That's in line with our	25	A. To describe how my life works is I get up in
	159		161
1	long-standing policy.	1	the morning and I have a big blue bathrobe, terry cloth.
2	Q. Was it your understanding that the position at 3 Reynolds was that if the media were to contact you, 4 that they would ensure that CDK and Reynolds were 5 aligned on that market message?	2	I take the dog out for a walk. I get a cup of coffee
6	A. Again, I'm not clear exactly who was doing what 7 here. I don't disagree with what was being done, but 8 it was, as far as I was concerned, it was 9 administration-type kind of issues about a project that 10 had already been done.	3	and some toast, I sit at my desk and the day commences.
11	Q. This document is dated February 26, 2015. My 12 understanding is that the contracts were signed on 13 February 18, 2015. So this document is eight days 14 after the contracts were signed. But I wanted to ask 15 you, you said that you had kind of finished with this 16 project earlier. Give me your best estimation of how 17 much earlier before this February 2015 time period 18 where you would consider yourself engaged in the 19 negotiation of these contracts.	4	Much to my wife's unhappiness, many times noontime
20	A. Unfortunately, I don't have a timeline of what 21 happened when, but I believe that I was detaching as 22 the final agreements were being drafted because the 23 reports I got back from principally Bob Schaefer was 24 all was in order, things were proceeding according to 25 our expectations and that my input was not necessary	5	comes and I'm still in the terry cloth bathrobe.
6	Q. You'll be surprised to learn that was not 7 exactly the information I was driving at, but I 8 appreciate your answer. My next question was going to 9 be whether you worked in physical proximity with 10 Mr. Schaefer. That was the question I was going to get 11 to.	6	Q. You'll be surprised to learn that was not 7 exactly the information I was driving at, but I 8 appreciate your answer. My next question was going to 9 be whether you worked in physical proximity with 10 Mr. Schaefer. That was the question I was going to get 11 to.
12	A. He is in Dayton, Ohio. I'm in Houston. We	12	A. He is in Dayton, Ohio. I'm in Houston. We
13	communicate typically by Skype when necessary. But he	13	communicate typically by Skype when necessary. But he
14	is a very experienced person, been around a long time,	14	is a very experienced person, been around a long time,
15	knows the waterfront, if you will. So I don't have	15	knows the waterfront, if you will. So I don't have
16	extensive communications with him. From an	16	extensive communications with him. From an
17	organizational standpoint, I have 16 direct reports,	17	organizational standpoint, I have 16 direct reports,
18	which is not right, but it is.	18	which is not right, but it is.
19	Q. Is Mr. Schaefer a direct report?	19	Q. Is Mr. Schaefer a direct report?
20	A. Yes.	20	A. Yes.
21	Q. So we obviously know from reading the documents 22 that you do use e-mail to communicate with Mr. Schaefer 23 and many other people. And you said you use Skype. 24 Any other forms of communication with Mr. Schaefer?	21	Q. So we obviously know from reading the documents 22 that you do use e-mail to communicate with Mr. Schaefer 23 and many other people. And you said you use Skype. 24 Any other forms of communication with Mr. Schaefer?
22		22	
23		23	
24		24	
25		25	

<p>1 when he's not in a place where he can access Skype.</p> <p>2 Q. So during this time period when the contracts</p> <p>3 were being negotiated and so on, give me an estimate of</p> <p>4 how frequently you are in contact with Mr. Schaefer</p> <p>5 with regard to these contracts. And I'm sure it</p> <p>6 varied, but just give me an estimate.</p> <p>7 A. Probably at that stage I would have been in</p> <p>8 contact with him once a week, once every ten days, two</p> <p>9 weeks.</p> <p>10 Q. Let me ask you to refer back to the exhibit in</p> <p>11 front of you, CX 4176, and ask you to take a look at</p> <p>12 the first box on the top of CX 4176-005.</p> <p>13 A. This is the top box?</p> <p>14 Q. Yes, sir.</p> <p>15 A. Yes.</p> <p>16 Q. My first question is under Scenario, it says,</p> <p>17 "New third-party vendor contacts CDK." How are</p> <p>18 third-party vendors dealt with in the contracts we</p> <p>19 looked at earlier?</p> <p>20 A. Again, this was the orderly stand down period,</p> <p>21 and as I recall, they got an announcement from CDK or</p> <p>22 actually from DMI that they were no longer going to be</p> <p>23 offering their Reynolds and Reynolds hacking services</p> <p>24 and that they directed them on to us to talk about what</p> <p>25 they needed to have done.</p>	<p>1 A. That is correct.</p> <p>2 Q. Do you have any idea magnitude-wise how many</p> <p>3 chose to go into RCI rather than not go into RCI?</p> <p>4 A. I don't have good information on that, but I do</p> <p>5 know that it was some number. It was not just one or</p> <p>6 two.</p> <p>7 Q. I'm sorry, some number that did what?</p> <p>8 A. Some number that actually elected to start</p> <p>9 having their dealership customers print reports and</p> <p>10 transmit them to the third party as opposed to being on</p> <p>11 RCI.</p> <p>12 Q. CX 4176-005 talks about a scenario where</p> <p>13 there's a new third-party vendor that contacts CDK. I</p> <p>14 interpreted that as a new third-party vendor being a</p> <p>15 vendor that hadn't already been subject -- had not</p> <p>16 already been using DMI to integrate onto the Reynolds</p> <p>17 system. Do you know whether the -- how the contracts</p> <p>18 dealt with the situation where a brand new vendor would</p> <p>19 go to CDK and ask for them to use their services?</p> <p>20 A. I don't know how the contracts addressed that</p> <p>21 or if they addressed that, but I think what's stated</p> <p>22 here is what actually happened in that if some new</p> <p>23 third party shows up and wants to access data in</p> <p>24 Reynolds' DMS systems, what happened here was that if</p> <p>25 they talked to CDK, CDK forwarded them on over to us.</p>
<p>163</p> <p>1 And I think it's important to point out that in</p> <p>2 many or most cases, batch-type kind of data can be</p> <p>3 handled by the dealer. They can run reports. They can</p> <p>4 point those reports out to a PC and they can transmit</p> <p>5 them into their third party, and they get all the data</p> <p>6 and it works just fine. The issue is that somebody has</p> <p>7 got to remember to do it every day. It's not one of</p> <p>8 these things where you can just kind of set your watch</p> <p>9 and everything is going to happen hands-off.</p> <p>10 And I would think some fair number of third</p> <p>11 parties were really pretty small and they really could</p> <p>12 get at what they wanted as far as getting dealership</p> <p>13 data by having the dealer send it to them.</p> <p>14 Q. Right. My understanding is that for existing</p> <p>15 DMI clients, they would have the choice -- once the</p> <p>16 contracts were signed, they would have the choice of</p> <p>17 either going into the RCI program if they wanted to</p> <p>18 continue to get automated, the data in an automated</p> <p>19 fashion. Or if they did not want to go to RCI, they</p> <p>20 could manually send the data. Is my understanding</p> <p>21 accurate?</p> <p>22 A. That's correct.</p> <p>23 Q. And my understanding is that some chose to go</p> <p>24 into RCI and others chose not to go into RCI. Is that</p> <p>25 your understanding?</p>	<p>164</p> <p>1 Q. What was your interpretation of the reference</p> <p>2 in the fourth bullet which says "CDK and Reynolds agree</p> <p>3 on the benefits of the dealers' DMS vendor providing</p> <p>4 data"?</p> <p>5 A. Well, I think it is what it says it is, that</p> <p>6 there are obvious advantages, one of which is that</p> <p>7 using an automated fashion that all the data that's</p> <p>8 supposed to be collected gets collected. Again, the</p> <p>9 key to the dealership actually printing reports and</p> <p>10 transmitting them to the third party, it requires</p> <p>11 somebody that is diligent and will do it every day like</p> <p>12 they are supposed to or every week or every month. And</p> <p>13 one of the benefits of an RCI-type contract is that</p> <p>14 personnel failure is removed from the equation.</p> <p>15 Q. The third bullet down talks about DMI</p> <p>16 continuing to provide data cleansing, standardization</p> <p>17 and aggregation services. Is that a reference to DMI</p> <p>18 providing a subset of services that do not include</p> <p>19 actually entering into the DMS, what you have referred</p> <p>20 to as hacking?</p> <p>21 A. Yes, that's my understanding. And what they do</p> <p>22 in those services I'm not aware of. That's not a</p> <p>23 business that we pursued and therefore have had no</p> <p>24 occasion to come to understand what's included. I</p> <p>25 think probably one of the obvious ones is a process</p>

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1 they call de-duplication. You end up with duplicate
 2 pieces of data. And they have to have some software, I
 3 think in some cases probably fairly sophisticated
 4 software, that detect the presence of dupes and
 5 actually have confidence enough where they can actually
 6 combine them where all that happens automatically.

7 **Q. And does the third bullet saying that DMI will**
 8 **continue to provide those services read in conjunction**
 9 **with the fourth bullet that CDK and Reynolds agree on**
 10 **the benefits of the dealers' DMS vendor providing data,**
 11 **the recitation of the fact that CDK will be moving away**
 12 **from its laissez-faire approach to third-party**
 13 **integration on its DMS?**

14 A. I'm afraid I'm missing the point.

15 MR. ABRAHAMSEN: Why don't you re-read the
 16 question, and then I'll probably end up rephrasing it.

17 (The record was read as requested.)

18 THE WITNESS: Sitting here reading it today
 19 after the fact, I agree that it could be understood
 20 that way. However, this particular document, I didn't
 21 draft it. So I'm unfamiliar with it. I haven't seen
 22 it. I have seen it for the first time today.

23 BY MR. ABRAHAMSEN:

24 **Q. And I appreciate you hanging with me through**
 25 **these questions and letting me use that as a crutch to**

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1 before we declare it a valid employee, we go check the
 2 payroll file, which is kind of simple but you know,
 3 certainly a reasonable thing to do from a security
 4 standpoint. And again, nobody else has done that that
 5 we know of.

6 **Q. Would that help detect whether there is a**
 7 **third-party integrator getting a user ID and password**
 8 **from the DMS?**

9 A. It would certainly detect them being provided a
 10 user ID and password. There is -- I believe that
 11 software also double checks that there is not two
 12 people connected to a single user ID. And again, the
 13 name and user ID has to be a name in the payroll file.

14 **Q. So if somebody like Mr. Batista was given a**
 15 **user ID and a password by a dealer to run an app on**
 16 **their dealership's DMS, you would use that -- that**
 17 **software would allow you to detect that Brown Chevrolet**
 18 **does not have a Phil Batista as an employee? Is that**
 19 **how it works?**

20 A. Exactly.

21 **Q. Let me ask you to look at -- and I appreciate**
 22 **I'm just using this document as a crutch to ask my**
 23 **questions because I know you haven't seen it and you**
 24 **didn't write it. CX 4182-003 Key Messages sentence**
 25 **numbered paragraph 1, second sentence, and I'll read**

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1 **ask you questions. Let me ask you to take a look at**
 2 **CX 4182. CX 4182 bears Bates REYCID0675485.**
 3 **Mr. Brockman, have you seen the document before?**

4 A. I don't recall seeing this document ever
 5 before.

6 **Q. It's entitled CDK Deal Information -**
 7 **February 2015.**

8 **I would like you to turn to the third page of**
 9 **the exhibit, which is CX 4182-003, and ask you to take**
 10 **a look at the paragraphs -- there's two numbered**
 11 **paragraphs under the heading that's underlined Key**
 12 **Messages.**

13 A. Yes, I see those.

14 **Q. Then the first key message, I think we've**
 15 **talked about the first sentence, "Reynolds has long led**
 16 **the way in the battle on DMS security." When you talk**
 17 **about DMS security, aside from keeping third party,**
 18 **what you refer to as, hackers off the system, what**
 19 **other security measures would you say Reynolds has led**
 20 **the way on?**

21 A. Well, there's, for example, establishment of
 22 user ID records inside the DMS system. One of the
 23 things that we did that I have not heard anybody else
 24 do it, since we also in most cases have the payroll
 25 information, what we do is we look at the user ID, and

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1 **it: "In doing so, other DMS providers are finally**
 2 **acknowledging that the fastest and correct way to move**
 3 **data between parties is to have the DMS push the data."**
 4 **Is the phrase "have the DMS push the data" a reference**
 5 **to what RCI does?**

6 A. Yes. RCI is typically, and it could be in all
 7 cases, set up to actually wake up and perform program
 8 instructions about what data to get, where to send it
 9 to, from which dealership. And I think in some cases
 10 even the hour of the day is specified in the RCI
 11 program.

12 **Q. The first clause in this sentence says "In**
 13 **doing so, other DMS providers are finally**
 14 **acknowledging". What is the reference in your**
 15 **interpretation of the other DMS providers?**

16 A. Other than what it says, other DMS providers.

17 **Q. In this February 2015 time period, obviously**
 18 **you had -- we have been talking about CDK and its**
 19 **position on data security. Were you aware of any DMS**
 20 **provider other than CDK, perhaps, that was**
 21 **acknowledging that the safest way to move data is to**
 22 **have the DMS push the data?**

23 A. That would be the only one that I would be
 24 aware of. Quite likely, some of the more minor DMS
 25 providers had also adopted it, but I'm not aware of

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<p>1 that.</p> <p>2 Q. And the second numbered paragraph, the first</p> <p>3 sentence states, "CDK is finally acknowledging that</p> <p>4 they need to move forward with securing their DMS."</p> <p>5 And "securing their DMS" is underlined. What is your</p> <p>6 interpretation of that?</p> <p>7 A. That's our belief, that what they are doing is</p> <p>8 that they are migrating to what we have been doing all</p> <p>9 along.</p> <p>10 Q. What you had been doing all along with regard</p> <p>11 to securing your DMS?</p> <p>12 A. Yes.</p> <p>13 Q. And would that include adopting a position</p> <p>14 where they would not permit third-party integrators to</p> <p>15 get onto their DMS?</p> <p>16 A. Yes.</p> <p>17 Q. The next paragraph down is entitled Important</p> <p>18 to Note. It's underlined. I would ask you to read the</p> <p>19 paragraph and then I'll ask my questions.</p> <p>20 A. Yes.</p> <p>21 Q. Let me give you my interpretation of what the</p> <p>22 paragraph is saying and then you correct me if I have</p> <p>23 misinterpreted it. It seems like now that the</p> <p>24 contracts have been signed, CDK is going to provide</p> <p>25 Reynolds with the identification of its clients that</p>	<p>1 what's going to happen is as we finally turn loose this</p> <p>2 next security update, there's going to be some people</p> <p>3 that won't work.</p> <p>4 And the fact that this even has to be said is</p> <p>5 kind of amazing because it is so clear that if you are</p> <p>6 not on the list, if we don't know that you are a CDK</p> <p>7 customer, certainly they will get the full force of the</p> <p>8 security changes that are impending.</p> <p>9 Q. And then there's a reference in the next</p> <p>10 sentence that we will know immediately whether these</p> <p>11 parties are supposed to be broken or not. And I</p> <p>12 interpret that to mean that you don't intend to disrupt</p> <p>13 the CDK clients but that if somebody is using an</p> <p>14 integrator that you are not protecting, they are</p> <p>15 supposed to be blocked. Am I interpreting it</p> <p>16 correctly?</p> <p>17 A. Absolutely correct.</p> <p>18 Q. So --</p> <p>19 A. And we have no knowledge as to how many, who,</p> <p>20 because an exploit that gets past or attempts to get</p> <p>21 past a security change, there's no way for us to know</p> <p>22 until we apply a security change and then somebody</p> <p>23 hollers. That's when we know that there's somebody new</p> <p>24 that we didn't know about before. And hopefully at</p> <p>25 this point there should not have been very much of</p>
<p>1 its integrating onto the Reynolds system. And</p> <p>2 following that, once Reynolds receives those and is</p> <p>3 able to protect those, Reynolds is going to put out its</p> <p>4 security update, a new security update; is that</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And the second-to-last sentence ends with the</p> <p>8 clause "meaning a number of users will be broken."</p> <p>9 What is your interpretation of that?</p> <p>10 A. Well, this goes back to the peaceful stand down</p> <p>11 process. Prior to that we had notified CDK that we had</p> <p>12 a number of security changes that we had been holding</p> <p>13 off releasing, but if they didn't finally agree to get</p> <p>14 out of our boxes, quit hacking us, we were going to</p> <p>15 turn loose those security changes which were going to</p> <p>16 make basically all of CDK inoperative as far as</p> <p>17 extracting data out of Reynolds' machines.</p> <p>18 Well, once the contract was done, the agreement</p> <p>19 in the stand down was that it would be an orderly stand</p> <p>20 down and there would be no stand downs that would cause</p> <p>21 trouble, unhappiness on the part of dealers. Well, in</p> <p>22 order to do that, we have to know who because we don't</p> <p>23 know who all the ADP customers are. We don't know who</p> <p>24 all their third parties are. So what we are talking</p> <p>25 about here is that if we don't get the names, then</p>	<p>1 that, but we don't know.</p> <p>2 Q. Well, so what happened? At this point, as I</p> <p>3 understand it, you have -- you are protecting some SIS</p> <p>4 customers under their stand down, and you are</p> <p>5 protecting the CDK customers under their stand down,</p> <p>6 and then you put in the security change, as I</p> <p>7 understand it. And so what happened? Were there</p> <p>8 people who were disrupted?</p> <p>9 A. The answer to that is I don't know of any. I</p> <p>10 just don't know whether there were, whether there were</p> <p>11 not. I do know that there was -- I don't recall any</p> <p>12 serious commotions. Whatever it was, I don't think</p> <p>13 there were very many.</p> <p>14 Q. So did there come to your attention any angry</p> <p>15 phone calls or letters or other forms of communication</p> <p>16 from people that were being disrupted as a result of</p> <p>17 your security enhancements after this March of 2015</p> <p>18 time period?</p> <p>19 A. Not that I'm aware. Of course, since then</p> <p>20 what's happened has been relatively quiet. Not</p> <p>21 completely, but relatively. Nothing major. But as</p> <p>22 security changes go on, continue to get improved, I'm</p> <p>23 sure that we'll find more. Where there is one hacker</p> <p>24 there, there are ten more behind them.</p> <p>25 Q. Just so the record is clear, I followed your</p>

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1 answer to the question. The question was very broad,
 2 so I'm going to break it down into two questions as
 3 between app providers and OEMs just so the record is
 4 clear about this.

5 Following this March 2015 time period, were you
 6 contacted by any OEMs because they had had applications
 7 that they wanted to use that were disrupted?

8 A. Personally, I received no such contact.
 9 Whether or not someone else in the organization did,
 10 I'm not aware. But I'm quite sure that I did not.

11 Q. And with regard to app providers in this time
 12 period following March of 2015, were you contacted by
 13 any app providers with regard to anger over disruption
 14 of their apps?

15 A. Not me personally.

16 Q. You mentioned in an earlier answer that, I
 17 forget the exact phrase you used, but you noted that
 18 CDK had had a number of CEOs or words to that effect.
 19 We have been speaking today and yesterday about
 20 Mr. Anenen. Who are the other CEOs of CDK in addition
 21 to Mr. Anenen that you are aware of?

22 A. Mr. Anenen was the last true CEO because he is
 23 like a 37-year veteran of the business and probably the
 24 longest serving veteran CEO. And probably I'm the only
 25 one that has got more than he. I have got 49 years.

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1 friends and old enemies, but there's no serious
 2 conversation that takes place. There's too much else
 3 going on.

4 Q. So you had serious conversations with
 5 Mr. Anenen over the phone, the ones we spoke about?

6 A. Yes.

7 Q. And did you have any conversations with
 8 Mr. Anenen after the contracts were signed that we
 9 looked at?

10 A. No. As a matter of fact, the only interaction
 11 I have had with him is at the big national auto dealers
 12 association convention. He was no longer with CDK, and
 13 he stopped past just to say hello. He's a nice guy.

14 Q. To what extent have you had conversations with
 15 the CEOs at CDK who have followed Mr. Anenen?

16 A. None.

17 Q. You have never spoken with them on the phone?

18 A. No. I don't exist as far as they are

19 concerned. Yes. And I have not -- I got other things

20 better to do than to seek out a conversation with them.

21 Q. And just to make sure the record is clear on

22 this, have you had occasion to meet with them

23 informally at an industry conference?

24 A. As far as I know, the answer is no. However,

25 what happens is that at NADA people kind of travel in

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1 But I can't recite the names to you. The most
 2 recent was a gentleman that was president of Intel.
 3 And he was dismissed from Intel for an inappropriate
 4 relationship. And his new job is CEO of CDK.

5 And there were two others besides him prior.
 6 And this is caused by the fact that CDK is controlled
 7 by a group of hedge funds. Hedge funds, it's my
 8 understanding that they hold like 60 percent of the
 9 stock of CDK. And they are very impatient for
 10 improvement in operations and the profits to be -- to
 11 come about inside CDK. So therefore, they appear to be
 12 very quick on the trigger to turn over CEOs in seeking,
 13 you know, improved stock valuations so they can
 14 ultimately sell the stock that they hold today and make
 15 a profit and get on to the next deal. I'm sure it's
 16 been disappointing to the hedge fund folks that it has
 17 not already been able to occur.

18 And this is all a matter of public record and
 19 probably is the only part of CDK that I pay attention
 20 to. I'm always curious as to who my counterpart is.

21 Q. So we went through some -- we talked about some
 22 conversations you had with Mr. Anenen. Telephone
 23 conversations, I believe. Did you also meet with him
 24 at NADA?

25 A. Briefly. NADA is, you shake hands with old

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1 packs of two, three, four, five, six, seven, eight, ten
 2 people. And they come by and I would not recognize
 3 them by face. And they don't announce themselves.
 4 They don't have a sign on them that says I'm CEO of
 5 CDK. So I may possibly have seen some but not
 6 understood who they were.

7 (A recess was taken.)

8 BY MR. ABRAHAMSEN:

9 Q. Mr. Brockman, we were talking yesterday, I
 10 believe it was, about how the OEMs need to certify a
 11 DMS provider in order for the DMS provider to have
 12 their franchise dealers as using the DMS. Do you
 13 recall that?

14 A. Yes.

15 Q. And we talked about decertification as
 16 something that would be very, very bad for the DMS
 17 provider if an OEM were to do that.

18 A. Disastrous.

19 Q. Short of decertification, is there other things
 20 that OEMs can do to the DMS to sort of influence how a
 21 DMS undertakes certain policies?

22 A. Yes. Probably one of the ones that we see the
 23 most often is -- and we'll say that Ford Motor Company
 24 has a new initiative regarding a service and how that's
 25 handled from a computer standpoint. And what they do

17 (Pages 174 to 177)

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1 is, they kind of separate it into multiple pieces. And
 2 there will be mostly old pieces but then some new
 3 pieces. And let's say that the new piece is a new
 4 interface where a dealership that uses the right DMS
 5 with the right certifications, they can type in a
 6 vehicle identification number and get an instant
 7 readback of all the warranty claims that's been made on
 8 that vehicle so that you can see if, say, for instance
 9 another dealership fixed something under warranty, but
 10 they really didn't fix it. So you have the right to
 11 kick over to them and say, look, you guys fix it.

12 Well, if you are not on the good guy list as a
 13 DMS provider, you may not get access to this special
 14 new facility that Ford is making available, which is
 15 very, very worthwhile and important to dealership
 16 customers. So therefore, you are in the
 17 never-neverland where you are not decertified, but
 18 again you are not quite fully certified either. And
 19 larger dealerships will be very, very sensitive to
 20 this, which is we have a lot of customers in that
 21 category.

22 And so it even comes down to dates of approval.
 23 If we don't meet their schedule, their desired schedule
 24 as far as the creation of the additional facilities
 25 inside the factory communications, they'll say, okay,

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 1 situation forever, but that's the opening expectation.
 2 **Q. And in this particular instance, you did reach**
 3 **an agreement with CDK, and the anger that would have**
 4 **been directed to the OEMs was avoided, presumably?**
 5 A. Correct.
 6 **Q. Let me ask you to take a look at an Exhibit**
 7 **CX 4038. CX 4038 has Bates REYCID0577749. It's an**
 8 **e-mail with three pages of attachments. The subject**
 9 **line is 6240's.**
 10 A. Well, I conclude that we've got a senior vice
 11 president of sales that writes pretty good.
 12 **Q. What do you conclude that based on?**
 13 A. Well, short paragraphs, to begin with.
 14 **Q. You said vice president of sales, and you are**
 15 **referring to Keith Hill; is that correct?**
 16 A. Yes, that's correct.
 17 **Q. Have you seen this document before?**
 18 A. No, I have not.
 19 **Q. With your indulgence, I'm going to still use as**
 20 **an effort to ask you to interpret certain things in it.**
 21 **In his cover e-mail, he talks about some of the**
 22 **subjects we have been talking about in the last two**
 23 **days, data security, and he uses the phrase in the**
 24 **sentence "unattended automated access."**
 25 A. Yes.

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1 you are late but we are still going to certify you, but
 2 we are not going to give you that until next March.

3 That's dirty pool, but they are the guys. And
 4 we end up having to work programmers nights and
 5 weekends to meet their crazy schedule as far as when
 6 something is supposed to be built, tested, implemented
 7 in the field by their by-god date.

8 **Q. And I'm curious, you have mentioned several**
 9 **times in the last two days that you contemplated**
 10 **throwing the switch on CDK and blocking their apps,**
 11 **shutting them down. Was there any concern that if,**
 12 **say, you shut down CDK because you didn't have an**
 13 **agreement with them and caused disruption to a lot of**
 14 **dealers' use of CDK, the products that CDK was**
 15 **integrating onto their DMSes, was there any fear that**
 16 **OEMs would be angered by this also, the dealers would**
 17 **complain to the OEMs and that the OEMs would take**
 18 **actions adverse to Reynolds because of the blockage**
 19 **that had taken place?**

20 A. That's always a possibility. But the hopes are
 21 in any kind of situation such as we went through CDK
 22 that cooler heads would prevail and a reasonable
 23 situation would occur as opposed to a disastrous one.
 24 And historically, that's always been the case. Now,
 25 you can't say that's going to be that way on every

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 1 **Q. How do you interpret that?**
 2 A. Well, there the dividing characteristic is
 3 unattended. And the reason for that is and that's my
 4 interpretation from a liability standpoint is that if a
 5 dealer runs a report and then turns around and e-mails
 6 that to a third party, that's perfectly within his
 7 rights to do that, and there's nothing incorrect about
 8 that. But it also means that if something goes wrong
 9 from a data breach standpoint, it's his problem. It's
 10 not our problem.
 11 So the unattended access just crosses the line
 12 to what happens over and over again, and that's an
 13 unattended report will be set up and it will run, and
 14 it will run faithfully every day, every week, every
 15 month, and nobody knows it's running. The actual
 16 running of an unattended batch job creating a data set
 17 that would be used outside the dealership, there's no
 18 scream of flashing lights that says we are now
 19 currently extracting payroll data.
 20 But the point is that if the dealer decides to
 21 extract data out of his system and then put it in his
 22 PC and transmit it to somebody, that's his problem.
 23 When it's automatic and we allow that to occur, all of
 24 a sudden we start getting our hands in the liability
 25 grease.

18 (Pages 178 to 181)

<p style="text-align: right;">182</p> <p>1 Q. So firms like DMI, IntegraLink, they were doing 2 unattended automated access to Reynolds' DMSes?</p> <p>3 A. Correct.</p> <p>4 Q. Is there -- I'm just trying to figure out in my 5 mind whether unattended and automated are redundant. 6 Can there be automated access to a DMS that doesn't 7 inflict liability on Reynolds?</p> <p>8 A. The only one that I can conceive of -- and this 9 is a theoretical answer. I don't know that it exists 10 in real life would be vehicle data used to populate 11 websites, because vehicle data we perceive to be -- 12 since it's available on every dealership's website to 13 begin with, this is basically public data, and 14 therefore -- but also it changes all the time. So 15 therefore, an automated unattended process for 16 consolidating and transmitting vehicle inventory data, 17 there is no liability associated with that. But 18 anything that has name, rank, serial number, you know, 19 personal information, PII or NPPI, that has tremendous 20 liabilities associated with that, the likes of which we 21 have not begun to see.</p> <p>22 Q. To your knowledge, did Reynolds send out 23 talking points to the sales staff so that they would be 24 able to address the security issues after contracts 25 were signed?</p>	<p style="text-align: right;">184</p> <p>1 marks, and the last hash mark talks about DMI and 2 IntegraLink, and the last sentence of that hash mark 3 says, "They now see the risk inherent in facilitating 4 unattended automated data extraction." Do you 5 interpret that as the risk inherent in the data being 6 extracted and then getting into the wrong hands?</p> <p>7 A. Yes.</p> <p>8 Q. The bullet above that says "CDK and Reynolds 9 have partnered together to push data securely. Thus, 10 85 percent of the market is now in agreement with our 11 stance." What do you interpret that to mean?</p> <p>12 A. Well, I interpret that to mean that as 13 knowledge of the availability of the 3PA program has 14 now become pretty widespread, and it's now obvious that 15 CDK has changed their feeling as far as data security 16 is concerned to no longer be laissez-faire but to 17 actually have a more secure policy.</p> <p>18 Q. Do you interpret that to extend to both CDK 19 agreeing to use RCI for its apps and also to restrict 20 third-party integration on its own system?</p> <p>21 A. I'm not focusing on what they do as far as 22 their own system is concerned, but the fact that they 23 understand our position and they are not going to try 24 and hack us.</p> <p>25 Q. Let me ask you to take a look at Exhibit</p>
<p style="text-align: right;">183</p> <p>1 A. I think that's what this document is all about.</p> <p>2 Q. Were you aware at the time -- this is sort of 3 the March 2015 time period. Were you aware that these 4 instructions were being sent out to the sales staff?</p> <p>5 A. No. And I would have no occasion to be aware, 6 because Keith Hill is a senior VP of sales. He is an 7 interesting person in that he was a mathematician, a 8 math major in college, but he also was a high school 9 football coach. And so you have the personnel planning 10 capability he has because, of course, high school 11 football is all about that, deciding, you know, who can 12 start, who can play, who does what position, who gets 13 benched because of being unmannerly with a mathematics 14 background which means that he understands computer 15 systems. While he's not a software person, he 16 understands from a principle standpoint how the guts of 17 the things are supposed to work.</p> <p>18 Q. Is he a direct report to you?</p> <p>19 A. Yes. And I might add a very capable direct 20 report. As a result, I don't spend a lot of time with 21 him. My theory as far as personnel management is 22 concerned is when they can do as good as I can do it, I 23 need to let them do it.</p> <p>24 Q. Let me ask you to flip to the second page of 25 the exhibit, CX 4038-002. And there's a series of hash</p>	<p style="text-align: right;">185</p> <p>1 CX 4459. CX 4459 bears Bates REYCID0186574. This is 2 an e-mail dated November 21, 2016 from Tommy Barras to 3 Mr. Schaefer and Mr. Brockman. Who is Mr. Barras?</p> <p>4 A. He is an executive VP of software development.</p> <p>5 Q. Is he a direct report to you?</p> <p>6 A. Yes.</p> <p>7 Q. Did he -- was he working at Reynolds when UCS 8 acquired Reynolds?</p> <p>9 A. No. He is originally a UCSer. He and I have 10 worked together probably 48, 49 years.</p> <p>11 Q. And he's been doing software development with 12 you in that whole time period?</p> <p>13 A. Yes.</p> <p>14 Q. In the body of his e-mail to you at the top of 15 the first page of CX 4459, the first word in the 16 sentence is S-Y-S-C-H-E-C-K. What is that?</p> <p>17 A. Syscheck. I hope you'll bear with me because 18 some of the explanation of necessity has got to be a 19 little technical. The operating system that the DMS is 20 built around is what's called a multi-user operating 21 system. And what that means is that if you have a 22 system that has 100 PCs attached to it, each one of 23 those is a separate user as far as the operating system 24 is concerned. And the operating system, to the extent 25 that it is set up that way, can handle 100 different</p>

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1 users pretty much simultaneously. Well, they are not
 2 exactly simultaneously. They are kind of close. Every
 3 minute of computer power that's available, it's used by
 4 many different users of the 100 that are out there.

5 Now, that's really pretty cool except for the
 6 fact that people like in the accounting department that
 7 have big end-of-month reports they have to create,
 8 batch reports are very different in their usage
 9 characteristics. If you have a terminal-based
 10 application, somebody that uses a terminal and then
 11 they won't, and that frees up computer power for all of
 12 the rest of the folks. Even if you have five or six
 13 people, they are not -- each one of them isn't getting
 14 that big a bite of computer power.

15 But in the accounting world, we have big batch
 16 programs that run at the end of the month. Think of it
 17 like a machine gun. They just load in this infinite
 18 supply of ammunition and they take the trigger down and
 19 it just goes with no break. And what that does is you
 20 can actually -- not theoretically, but it actually
 21 happens in practice where the accounting department
 22 with six or seven users can suck up all the computer
 23 power, which means people that run terminal
 24 applications like parts invoices or service repair
 25 orders or service invoices, they have to wait.

1 we basically shut down batch reports that are consuming
 2 computer time with the indication that if we want to
 3 run this thing, you've got to do it at night.

4 Now, interestingly enough, all this sometimes
 5 results in a power play between departments in that the
 6 accounting folks will raise up and beat their chests
 7 and say you guys don't let us run our reports all day
 8 whenever we want to run, tough luck if payroll doesn't
 9 get run on time. And everybody gets all shaky about
 10 that. But that's the wrong answer.

11 The right answer is that the transaction-based
 12 customers need to have as close as we can get to
 13 instant response time because those people are
 14 profit-producing people. The dealership, finance
 15 managers, service managers, they need to have the
 16 capability to get their work done. And the accounting
 17 folks need to wait. And I don't publicize my feelings
 18 on that widely, but I mean, that's the truth.

19 (A recess was taken.)

20 BY MR. ABRAHAMSEN:

21 **Q. Let me show you an exhibit we've marked as**
 22 **CX 4420 and ask you to take a look at it. CX 4420 has**
 23 **Bates REYCID0186518. The exhibit is an e-mail from**
 24 **Mr. Schaefer to Mr. Brockman in November 2016. And the**
 25 **subject of the document is Stone Eagle Request For**

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1 And this is a logic issue that is a little hard
 2 to get around, but we devised Syscheck. And what
 3 happens is Syscheck is a dipstick into the computer
 4 usage, and it knows -- you can dipstick and say, okay,
 5 it's 85 percent consumed or 90 percent or 50 percent,
 6 but when it gets up fairly high, and I would say
 7 probably 85 or 90, it's smart enough that it suspends
 8 the batch programs and lets the other 90 users in the
 9 pile, it will get their answers quickly. Because the
 10 transaction base, what you hate is when you enter a
 11 bunch of data entry, hit the button and then you got to
 12 wait.

13 And of course, what that then leads to is users
 14 accuse the DMS provider of a defective system, you are
 15 forcing us to buy a bigger computer. And our only
 16 defense now, which is a pretty good defense, we turn on
 17 Syscheck and people that are wanting to do something,
 18 if the computer system is overloaded, they get a
 19 message on their screen that says, I'm sorry, the
 20 accounting department is doing you in. Anyway, that's
 21 what Syscheck is all about.

22 **Q. So what is the reference in that same sentence**
 23 **to the AUR exemption?**

24 A. That one I'm having a little difficulty with
 25 what AUR is. I think it had something to do with where

1 **Changes. Mr. Brockman, who is Stone Eagle?**

2 A. Stone Eagle is a third party that specializes
 3 in analysis of vehicle sales and more especially
 4 vehicle financing and aftermarket sales. And they get
 5 information on car sales, quote, deals. A deal is what
 6 we -- a term we use to apply to the facts of the whole
 7 transaction and the paperwork. The whole transaction,
 8 which is kept in a file folder. And that's what Stone
 9 Eagle wants from us in terms of interface that they
 10 want all the finance deals for a month. And then they
 11 go run all their analysis programs and create nice bar
 12 charts and graphs and that sort of thing so that the
 13 dealership will understand how well they are doing in
 14 that area. And specifically, they'll understand by
 15 person, by finance manager who is doing what as opposed
 16 to looking at the overall department and saying, yes,
 17 it's good or bad or whatever. It's specific
 18 individuals.

19 **Q. In the e-mail that's in the middle of the first**
 20 **page of this exhibit, there's an e-mail from**
 21 **Mr. Schaefer to you dated March 15, 2016, and the first**
 22 **sentence of the e-mail says, "Stone Eagle executes this**
 23 **process today using their interface." What interface**
 24 **is being referred to in that sentence?**

25 A. Stone Eagle has been a customer that's like an

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20 (Pages 186 to 189)

<p>1 RCI customer, but it predates that. They are a very 2 mature company. They have been around a long time. 3 And what's happening here is that we are saying, look, 4 you got to go forward to the RCI process. They don't 5 particularly want to do that because it involves them 6 getting involved with programming, creating a new 7 interface from the data that they want. Their old 8 stuff, as far as they are concerned, works perfectly 9 fine. But we've said that the old process is dying. 10 You got to go to the standard process. And they are 11 dragging their feet, frankly. As a matter of fact, 12 they were the worst that exhibited dragging their feet. 13 They didn't say no. They just couldn't get it done. 14 We talked to them and they would give us a new 15 anticipated deadline, and we would go away and come 16 back when they missed the deadline. And that had been 17 going on for literally a couple of years. Other than 18 that, they are nice people. They pay their bills. 19 They are not complainers.</p> <p>20 And in this particular situation, they figured 21 out that the RCI interface that we had prepared for 22 them, they had left out the issue where there is a deal 23 done on paperwork and electronically, but it got 24 unwound. In other words, it never actually happened, 25 yet the data was all recorded. And as far as the data</p>	<p>190</p> <p>1 was -- we were concerned that it was an oddball. 2 Whenever things are oddball, nothing good comes out of 3 that.</p> <p>4 Q. Let me ask you to take a look at CX 4463. 5 CX 4463 has Bates REYCID0265394. It's an e-mail dated 6 August 1, 2017 from Mr. Barras to Mr. Brockman on the 7 top. And it's a series of e-mails that follow.</p> <p>8 A. Yes.</p> <p>9 Q. Mr. Brockman, in the first e-mail in the 10 exhibit, the top one -- the top one on the first page 11 of CX 4463, the second paragraph states, "Stone Eagle 12 exemptions go beyond Hendrick. Third party has 100 13 exemptions into our ERA systems." What exemptions are 14 being discussed here?</p> <p>15 A. What's happening here is that the Stone Eagle 16 interface process has been around for a long time. It 17 probably dates before my time at Reynolds. And where 18 they have a bypass around the security changes, and 19 this is not desirable. It's a hangover. It's a 20 cleanup. And what's happening is Tommy Barras is 21 telling me, look, it's worse than just the current 22 Stone Eagle stuff. There's a bunch of others with 23 exceptions laying around out there.</p> <p>24 At this point we are getting more focused on -- 25 we actually have reports now that list every kind of</p>
<p>191</p> <p>1 pull that was happening here, we looked like everything 2 was just fine, but it turns out, out of the month there 3 were six deals that didn't happen, which impact the 4 numbers on the reports.</p> <p>5 And so we've got to do -- this one is called 6 Deal Reversal Notification. And it was one more thing 7 we had to do before we could finally get them to move 8 forward and completely get off the old interface and 9 get onto RCI.</p> <p>10 Q. In the footnote -- or I shouldn't say in the 11 footnote. There's a sentence in the e-mail in the 12 middle of the first page of CX 4420 that says, "As a 13 footnote, we've received the latest enhancements for 14 Stone Eagle that allow us to replace the Stone Eagle 15 hostile interface." In what way was Stone Eagle a 16 hostile interface?</p> <p>17 A. That is a misnomer. It's not a hostile 18 interface. It's like a hostile interface because its 19 bandit is different, but it was not hostile in the fact 20 that we definitely knew about it and condoned it, 21 probably were even selling it as a service and charged 22 them for it. But again, it was an obsolete interface. 23 It was less secure, and we wanted to move to RCI.</p> <p>24 Q. How was it less secure?</p> <p>25 A. I don't know the details. I just know that it</p>	<p>193</p> <p>1 exception that's in place. And we give these 2 exceptions or are really forced to give them from major 3 customers. For instance, here they are talking about 4 Heritage is a very big customer, Crain, DARCARS is 5 right here in D.C., and evidently we have some manner 6 of exception for those folks where they are not on RCI. 7 They are on something else that predates RCI.</p> <p>8 This is another example of the situation where 9 we have power to block things, but there's also a cost. 10 The cost is customer relations with major accounts.</p> <p>11 Q. Right. I mean, if you block them, they would 12 possibly move to a different DMS system?</p> <p>13 A. The noise would precede anything like that.</p> <p>14 Q. What noise?</p> <p>15 A. The customer just calling up and wearing 16 everybody out.</p> <p>17 Q. In the second sentence of the e-mail on the 18 very top of the first page of the exhibit, it says, 19 DSV, I think it's supposed to be "has" been talking 20 about moving for years now. No end in sight. What's 21 DSV?</p> <p>22 A. Data services, I believe, is what that stands 23 for.</p> <p>24 Q. So this is a department within Reynolds?</p> <p>25 A. Yeah, that reports to Bob Schaefer. And what's</p>

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<p>1 happening is, and as Mr. Barras is being very pointed 2 in his needling over the situation and quite properly 3 so, the amount of things that we've had to clean up 4 inside Reynolds has been huge. And we've aggressively 5 worked at that, but it's still not done yet.</p> <p>6 BY MR. LANNING:</p> <p>7 Q. Mr. Brockman, talking about this idea of 8 exemptions, were you in the habit or in the practice at 9 Reynolds to give exemptions to certain customers that 10 were using what you call hackers?</p> <p>11 A. Yes. And these would be large customers. 12 Frankly, in a lot of cases pretty sophisticated folks.</p> <p>13 Q. Like Hendrick?</p> <p>14 A. Like Hendrick and Penske, you know, very, very 15 large folks that have quite capable IT staffs on their 16 own separate from the work we do for them.</p> <p>17 These are not lightly handed out. I mean, 18 particularly for an exemption for a very big customer, 19 they got to come to me and I got to weigh the sales 20 issues. In accounts like this, there's some folks that 21 are just kind of obstinate, and other folks, their 22 excuse is, well, they are really busy. And there's 23 other folks that are the delay kind of folks: Well, 24 yeah, we'll do that but we're really busy right now. 25 We'll talk about it next summer and get it done that we</p>	<p>1 Q. Mr. Brockman, I would like to direct your 2 attention to something we were talking about earlier 3 today, which is if you go down near the bottom of the 4 page where the little letter C is and it says, 5 "Communication plan and marketing announcement" under 6 number 4, do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And I believe when we talked about this earlier 9 today, we were talking about the sentence that says, 10 "How will the agreement be announced to the market -- 11 they need to get this identified and understood quickly 12 due to the CDK global announcement."</p> <p>13 A. Yes.</p> <p>14 Q. Do you see that?</p> <p>15 A. Um-hum.</p> <p>16 Q. I believe it was your testimony, of course we 17 can go back and read it, but you were saying that this 18 was CDK's issue about the marketing and the 19 communication; is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. And my question to you, then, is what was CDK's 22 concern about getting an agreement where you were going 23 to either manage jointly a communication to the 24 marketplace or that you were going to at least review 25 this?</p>
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<p>1 constantly have to follow up on. Now we actually 2 review our lists of exemptions now, which makes it a 3 lot easier. Before we had to do a lot of legwork to 4 figure out who was doing what.</p> <p>5 Q. So in essence, you're saying that for the large 6 customers that might have those types of exemptions, 7 they have to be approved by you?</p> <p>8 A. Yeah. And the number is steadily falling, 9 especially now that we've got a list.</p> <p>10 Q. Would Mr. Schaefer make recommendations to you 11 about whether or not an exemption for a large customer 12 should be given?</p> <p>13 A. Yes. I wouldn't necessarily follow that up. I 14 would talk to Keith Hill.</p> <p>15 Q. I'm going to just ask you to go back to 16 CX 4037.</p> <p>17 MR. COHEN: Bill, could you just tell me what 18 that was or where it was.</p> <p>19 MR. LANNING: That's the September 11, 2014 20 from Robert Schaefer to Bob. It's the one-pager.</p> <p>21 MR. COHEN: Okay. Do you know how long ago you 22 guys used it?</p> <p>23 MR. LANNING: It was this morning.</p> <p>24 MR. COHEN: Thank you.</p> <p>25 BY MR. LANNING:</p>	<p>1 A. Well, I think the issue is that they wanted to 2 do what they wanted to do. They would much prefer to 3 actually have us agree to what they wanted to do, but I 4 believe in the end we did not agree. In this case 5 here, they went ahead and did it or were going to do it 6 anyway.</p> <p>7 Q. But was there an expression of what their 8 concern was about having this in relation to their 9 announcement of going public?</p> <p>10 A. Not that I recall. There probably was, but I 11 wasn't sensitive enough to remember.</p> <p>12 Q. And was it related in any way about a concern 13 that Reynolds might make an announcement about the 14 agreement that CDK didn't like?</p> <p>15 A. Well, I think probably that was part of it 16 because if we made the announcement the way we would 17 like, it would be very, very damaging to them. 18 Truthful, but it would be damaging.</p> <p>19 Q. What do you mean? What would this statement 20 say that might be truthful and damaging to them?</p> <p>21 A. Well, the truthful statement would be that they 22 had been hacking into our systems for many years and 23 quite a large number of systems. And I'm sure that 24 would have caused telephones to ring at CDK with 25 customers calling, was I one of the ones, that sort of</p>

<p style="text-align: right;">198</p> <p>1 thing.</p> <p>2 Q. Was there also an element to it that Reynolds</p> <p>3 might take the tack competitively that we were right</p> <p>4 all along on security and now that you are joining us?</p> <p>5 A. I don't know what they were thinking about, but</p> <p>6 that's one of the things they could have been thinking</p> <p>7 about.</p> <p>8 Q. So did you discuss this with Mr. Schaefer?</p> <p>9 A. Not that I recall.</p> <p>10 Q. Was there any discussion that CDK did not in</p> <p>11 advance of its going public want to announce that they</p> <p>12 were changing their position on being open or closed?</p> <p>13 A. Again, I'm not aware of anything like that.</p> <p>14 Q. I have just two more questions on another</p> <p>15 document, which is CX 4273.</p> <p>16 MR. COHEN: Would you mind telling us what that</p> <p>17 is again?</p> <p>18 MR. LANNING: The SIS settlement.</p> <p>19 BY MR. LANNING:</p> <p>20 Q. Could you please turn to CX 4273-003 and go</p> <p>21 down to V, section V or numeral 5 that starts with the</p> <p>22 exception of the wind down period for SIS. Do you see</p> <p>23 that?</p> <p>24 A. Yes.</p> <p>25 Q. I just had one question here. If you go to the</p>	<p style="text-align: right;">200</p> <p>1 to clarify any testimony that you have given over the</p> <p>2 past two days. Do you have any clarifications to make?</p> <p>3 THE WITNESS: No.</p> <p>4 MR. ABRAHAMSEN: Then we will adjourn today's</p> <p>5 session. We will keep the record open. And everybody</p> <p>6 can go to lunch.</p> <p>7 (Whereupon, the proceedings at 1:08 p.m., were</p> <p>8 adjourned.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">199</p> <p>1 sentence that's about midway down, and it says, "For</p> <p>2 the avoidance of doubt, the covenants set forth in this</p> <p>3 paragraph 3(a)(v) are not intended as a covenant not to</p> <p>4 compete." Do you see those?</p> <p>5 A. Yes.</p> <p>6 Q. I guess I'm curious, why was this put in the</p> <p>7 SIS agreement?</p> <p>8 A. Well, I would like to be helpful, but frankly,</p> <p>9 I don't know because I wasn't part of the crafting of</p> <p>10 these documents. And just looking at it today, it</p> <p>11 looks to me like it was -- an attorney wanted to put in</p> <p>12 some sort of blanket statement.</p> <p>13 Q. Were you competing with SIS at this time?</p> <p>14 A. SIS is a data extractor where they in bandit</p> <p>15 mode go into a system. We don't do that. We've never</p> <p>16 done that and therefore, we don't compete with them.</p> <p>17 They have that market all to themselves.</p> <p>18 Q. That's why I was curious about why the language</p> <p>19 was in there. If you are not competing with them, why</p> <p>20 are you concerned about it being construed as a</p> <p>21 covenant not to compete?</p> <p>22 A. I have no idea.</p> <p>23 MR. LANNING: Thank you very much. That's it</p> <p>24 for me.</p> <p>25 MR. COHEN: Mr. Brockman, you do have a right</p>	<p style="text-align: right;">201</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2</p> <p>3</p> <p>4 I, Deborah Wehr, do hereby certify that the</p> <p>5 foregoing proceedings were taken by me in stenotype and</p> <p>6 thereafter reduced to typewriting under my supervision;</p> <p>7 that I am neither counsel for, related to, nor employed</p> <p>8 by any of the parties to the action in which these</p> <p>9 proceedings were taken; and further, that I am not a</p> <p>10 relative or employee of any attorney or counsel</p> <p>11 employed by the parties hereto, nor financially or</p> <p>12 otherwise interested in the outcome of the action.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17 Deborah Wehr, RPR</p> <p>18 Notary Public</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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